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MAY MEETING.

THE stated meeting was held on Thursday, the 11th instant, at three o'clock, P. M.; the second Vice-President, Mr. WARREN, in the absence of the President, in the chair.

The record of the last meeting was read and approved; and the Librarian reported the list of donors to the Library since the last meeting.

The Cabinet-Keeper reported the following gifts:

From the *New York Times*, Russom's drawing of the late Charles Francis Adams, which appeared in that paper, March 26, 1916.

From Mr. Alfred Bowditch, six caricatures of British public characters, drawn by James Sayers or Sayer (1748–1823) and etched and published, April–July, 1782, by C. Bretherton. The persons represented are: Lords Amherst, North, Shelburne, and Sandwich; the Marquis of Rockingham and Colonel Barré — all connected with the history of America.

From Mr. Frank W. Bayley, three photographs: of Mrs. Sarah Savage, wife of Samuel Phillips Savage, from a portrait by Copley; of their son's wife, Mrs. Samuel Savage, from a portrait by Stuart; and of their granddaughter, Mrs. Lemuel Shaw, wife of the Chief-Justice, from a portrait by Francis Alexander.

From Mr. H. A. Gray, a Franklin medal, the very first of the series dated 1808, also twenty-five cent pieces of recent dates, and a Bahan store card.

From Mr. Frederick T. Widener, the medal of the Concord School, and the medal of Company B, Massachusetts Volunteer Militia.

From Mr. C. P. Bowditch, the Butler Richmond medal in pewter, 1864.

From the Bostonian Society, the Boston City medal, 1827, awarded to Almira Homer.

The Corresponding Secretary reported the receipt of a letter from Thomas Russell Sullivan accepting his election as a Resident Member of the Society.

The Editor reported the following gifts:

From Mr. Francis Reginald Bangs, the MS. Diaries of Benjamin and Isaac Bangs, of whom he writes: "Benjamin Bangs, according

to the record that I have of him,[1] was the fifth in descent from the original immigrant, Edward Bangs, and was born June 24, 1721, and died October 31, 1769. Isaac, his son, was born December 11, 1752, and died September 12, 1780, unmarried. Isaac graduated from Harvard College in 1771. He was my father's great-uncle. My father published the journal of Isaac in 1890; but the journal of Benjamin has, so far as I know, never been published. It seemed to me that those original documents were too valuable to be kept in private ownership, where they might be lost or scattered, and therefore I have decided to give them to your Society in memory of my father, who was a member of it."[2] There are four volumes of Benjamin Bangs' diary: I, January 1, 1742–43–May 31, 1749; II, July 16, 1759–July 13, 1761; III, July 14, 1761–June 23, 1763; and IV, June 24, 1763—December 4, 1765.

From Mr. Charles Moore, of Detroit, Mich., a diary of Abigail Livermore, wife of Rev. Elisha Scott Williams. She was born November 20, 1758, in Waltham, Mass., was married in her home August 30, 1780, and died July, 1818, in Boston, Mass. The town of Livermore, Me., was named for her father, and she and her husband went there as settlers, were converted, and he entered the Baptist ministry, serving for many years as pastor of the church in Beverly. He was a descendant of Governors Thomas Dudley, Simon Bradstreet and Rev. John Cotton. With the diary, which extends from 1809 to 1813, Mr. Moore gives a type-written copy, notes on Mr. and Mrs. Williams, and the military record of Rev. Mr. Williams.

From Miss Susanna Willard, a MS. catalogue of the library of her father, Joseph Willard.

Francis Apthorp Foster, of Edgartown, was elected a Resident Member of the Society; and Charles Downer Hazen, of Washington, D. C., a Corresponding Member.

Announcement was made of the appointment of the following Committees:

House Committee: GRENVILLE H. NORCROSS, J. COLLINS WARREN, and WORTHINGTON C. FORD.

Finance Committee: HENRY CABOT LODGE, GRENVILLE H. NORCROSS, and CHARLES P. GREENOUGH.

Committee to Publish the Proceedings: HENRY CABOT LODGE, JAMES FORD RHODES, and EDWARD STANWOOD.

It was voted that the income of the Massachusetts Historical

[1] A copy has been placed in the Society by Mr. Bangs.

[2] Edward Bangs (1825–1894) was elected a member of this Society, June 11, 1884. A memoir of him will be found in 2 *Proceedings*, X. 311.

Trust Fund for the financial year be retained in the treasury, to be expended in such objects as may seem desirable to the Council of the Society.

Mr. WARREN then read the following paper on

CONTEMPORANEOUS OPINION.

In reading the recently published autobiography of our late President, Charles Francis Adams — as interesting a work as in many respects it certainly is extraordinary — we are reminded, by that part of it which treats of his experiences in Washington just before and after the inauguration of Lincoln, and of his opportunities for listening to the conversation and speeches of such men as Secretary Seward, Senators Sumner, Crittenden, Fessenden, and others (including his own distinguished father), of the old question as to the reliability and value of contemporaneous opinion of men and events.

Mr. Adams is characteristically sweeping in his view of the opinions and attitude of the men he met. We are not now so much concerned with the exactness of his statements as we are with the evidence furnished elsewhere of the statements and conclusions of the eminent statesmen referred to and of others of that period. It is clear enough now that none of the statesmen of the time before the Civil War really grasped the situation or sized up correctly the actions and purposes of the leading men in the opposing sections of the country.

The evident doubt and indecision of the winter of 1861, the futile talk of compromises of a matter that it was then too late to compromise, the hesitation as to the use of force even after the change of Administration, the confusion of thought and narrowness of vision of men of all parties — show plainly enough that up to that time public opinion had not clarified, and that the opinions of our ablest men were extremely fallible.

Mr. Adams suggests that our leaders were more concerned with discussing the abstract question of the technical right of secession than they were of taking practical steps to suppress what was really a revolution. There is some ground for his conclusion; but however that may be, there is plenty of proof that the statesmen of the North failed then to appreciate the

earnestness and intensity of view of the Southern leaders, and those of the South were equally unaware of the strong Union feeling of the North and of its determination to preserve the Union unbroken. Undoubtedly, apart from all this, there remained the slavery question, but at the outset of the Civil War it can hardly be maintained that that was the determining factor, at least at the North. While a considerable body North and South based their whole thought and action upon that question of slavery, the country as a whole had not yet consolidated its opinion upon the subject so far as it related to the war — the main question being then the preservation or destruction of the Union.

If we seek contemporaneous opinion therefore at that early state, we find it confused and misleading, and a sound historical judgment upon men and events has to be made up from the light thrown upon them by the later development of facts, and by more exact knowledge as to the part played by individual actors.

In other words, while we get something from the views expressed by prominent men of the day, we find that as a whole their judgments were inclined to be hasty and incorrect, and that they were not borne out by the test of later knowledge.

Considering that period alone, we can attach comparatively little importance to the opinions of contemporary actors or writers; though they are not to be entirely disregarded, for with all their narrowness and disagreement there is a stratum of truth in their conclusions, and we find that later history in its estimate of the principal actors of the period confirms to a degree contemporaneous opinions, and in some cases not only agrees to, but emphasizes them.

Napoleon in one of his glittering generalizations said that "History was a pack of lies that had been agreed upon" — the general view has been the other way if anything, that it was more nearly a pack of lies that had not been agreed upon — but if there is a grain of truth in the first statement it gains whatever force it has from history that has been made up of contemporaneous opinion unconfirmed by later and more exhaustive study. I do not know of any more noteworthy example than that of Napoleon himself, for history after the lapse of a hundred years and a deluge of books upon the sub-

ject has not yet accepted or thoroughly digested the lies or the truths of his meteoric career. John C. Ropes, the student of Napoleon, said to me, a few weeks before his death, that, notwithstanding the countless lives of Napoleon, his real history was yet to be written.

If that statement holds true, one may well despair of getting at the truth of history from contemporaneous sources, even when fortified by a vast array of later facts.

The comparatively short history of our own country gives us interesting and rather striking instances, not only of the fallibility of contemporaneous judgment, but also in individual cases of its general correctness. I do not mean by "contemporaneous judgment" the mere clamor of the multitude at any particular period, but the deliberate judgment so far as it can be ascertained of the majority of thoughtful men.

The discussion still rages whether the contemporaneous opinions of our Puritan ancestors regarding Roger Williams, Anne Hutchinson, and the Quaker element were correct or not under the conditions that confronted the early settlers. Until recently the contemporaneous opinion of Governor Hutchinson of pre-Revolutionary character remained practically undisturbed, but to-day that opinion seems to be completely reversed. If I read modern history aright, though nothing too severe or denunciatory could be said of Hutchinson in his lifetime, now the predominant view of him is that upon the whole he was an upright, able, and patriotic man, mistaken in his political ideas, but striving for what he considered the best interest of his own country.

Consider the men foremost in the American Revolution. Washington — an exception to all rules — was apparently estimated by his contemporaries upon much the same basis as in later times, the only change being that reverence and admiration for him have increased. The same in a less degree seems true of Franklin; but if in these marked instances contemporaneous opinion seems more than justified, can the same be said of Hamilton, Adams, and Jefferson? Of the two former it may be said that in large measure it does, but that the contemporaneous opinion was not so clear and positive as that of a later day, and that the modern public estimate of their surpassing abilities and force of character is not so much different

from that of their contemporaries as it is higher and more decided.

Of Jefferson, however, there has been a complete reversal of judgment — not so much as to the opinion generally held of him during the Revolution, as of that after the war, when political feeling ran high and partisanship had grown bitter. Popular as Jefferson then was with the masses, no man was ever more subject to detraction and abuse than he, and it is not too much to say that in his time by the great majority of the thoughtful men of the country he was considered a wily demagogue who was using his acknowledged ability to very little honest or useful purpose. One reads with a smile the fierce invectives and attacks upon him by the wisest and purest statesmen and writers of the day; for time in his case has worked wonders and he is now extolled in history and praised by nearly all writers as one of our ablest, greatest, and sincerest patriots. I do not know in our history of any more notable change of view.

If we had time to discuss it here, we should find, I think, that what is true of the men of the Revolution is equally true as to the change of view in modern times regarding the real causes of that war, and the influence of its success upon the world at large.

Daniel Webster's paragraph, in which he said "America fought seven years for a preamble," has been often quoted, and until recently with general approval; but modern opinion does not accept that view, and though it may tend to lower ideals, maintains that preambles and theories as to taxation without representation, or as to oppressive taxation, etc., were in reality mere pretexts for a revolution that had its real foundation in the desire for complete liberty, and the growing feeling that, as the Thirteen Colonies had for a century or more practically managed their own affairs, they were strong enough and able enough to do without the guidance of the mother country. Not that the leaders did not believe in the reality of the pretexts, but they were, after all, things to conjure with, while the masses who worked and fought were influenced by less subtle motives, and were inspired, whether they recognized it or not, by the belief in their own manhood and in their inherent right to freedom and independence.

Nor was the contemporaneous view of American or foreign statesmen as to the result of the war the same as that of after years. No one at the time foresaw the rising of this vast empire or realized the profound influence to be exerted upon Europe by the successful assertion here of the principles of popular government.

As throwing light upon the value of contemporaneous opinion, we may well consider the history of a few of our public men — some of them Presidents of the United States, men concerning whom the public judgment clearly crystallized at the time, and over whom heated controversy has since raged.

To Jefferson we have already referred. Turn now to that prominent and active figure in our history, Andrew Jackson. Certainly over him, in his own time and for long after, the fiercest controversy existed. Like Jefferson, he was the idol of the masses, but like him also, among thoughtful men, particularly in New England, he was regarded as headstrong, unprincipled, and dangerous. Yet that does not appear the verdict of history, for time has so far softened the asperity of political conflict and the prejudices of the day that he is now generally accepted as an able, forcible, patriotic man, whose disagreeable and unattractive qualities may be overlooked in the recognition of his real service to his country.

Or, coming down a few years, recall the contemporaneous opinion of Daniel Webster after his famous 7th of March speech. It is within the memory of many now living — how much bitterness that speech evoked, and how suddenly he was cast down from his high pedestal of popularity and denounced as a traitor to the moral judgment of the people.

Yet time has quickly reversed that judgment as hasty and ill considered; Webster's patriotic purpose and devotion to the Union of the States have been recognized by many who condemned him, and a grateful people have come to a realizing sense that to Webster more than to any other man the country was indebted for that intense Union feeling that did so much to sustain the North in the long civil conflict. The modern judgment of Webster is more nearly that of his contemporaries before the 7th of March, without, of course, the marked personal adoration. The clear resemblance between the principles of the speech of March, 1850, and the declaration of Abraham

Lincoln that his duty was to restore the Union with or without slavery, has been noted by many writers, and it has been urged that Daniel Webster's speeches had great influence in moulding the views of Lincoln.

If we accept Adams' account of the doubt and uncertainty existing in the early part of Lincoln's administration — and there is other abundant evidence to confirm it — we may well hesitate to adopt to the full the contemporaneous opinion of that much blamed and much criticised President, James Buchanan. The indictment of his weakness and vacillation is a formidable one, but later facts have disclosed more fully the enormous difficulties of the situation, the perplexity of the people, and the painful disagreement among our wisest men as to the proper course that should be pursued.

Perhaps at this distant day the mantle of charity can be dropped over a man advanced in years, suddenly called upon to face a dire catastrophe, betrayed by his former advisers, and uncertain where to turn for counsel or support. The opinion of his time as to Buchanan may be clearly right, but he is a bold man who can with confidence assert that the verdict of history has yet been finally rendered.

The caution as to too positive assertion of the verdict of history in Buchanan's case is doubly strengthened if we recall, however unwillingly, contemporaneous opinions of Lincoln before the Emancipation Proclamation. His popularity was great, but many now remember how severely he was criticised by a portion of the ablest and wisest men of his own political party, and how vehement was the opposition of some of them to his renomination. Even of the great speech at Gettysburg it may truly be said that there was not instant appreciation of its eloquence and beauty. Though contemporaneous opinion did acclaim Lincoln as a great leader, it was somewhat at fault in its estimate, for not until after his death was the grandeur of his character fully understood and appreciated.

We turn from the impressive figure of Abraham Lincoln to the uninspiring character of his successor, Andrew Johnson; yet even he illustrates to a degree the subject we are considering, for public opinion of him in his day was clearly formed, and few men have been the object of such virulent contemporaneous criticism and abuse. Has the judgment of the time

in his case been confirmed by later opinion? I hardly think it has to the full extent. It is now universally conceded by competent authorities that the impeachment proceedings were upon the flimsiest of legal pretexts and the result of hostile political scheming. The diary of Johnson's Secretary of the Navy, Gideon Welles, published within a few years, has presented a picture of Johnson so different from the previously accepted view that it has had undoubted effect in to some extent rehabilitating him in the public estimate. I am inclined to think that to-day's judgment of Johnson is not that of his contemporaries, and that he is now generally regarded as a man who was honest and sincere, and who honestly strove to benefit his country, but that unfortunately he was the victim of his own narrowmindedness, obstinacy, and lack of political tact and experience.

Of the later Presidents it is too early yet to form a sure estimate, although it appears probable that of those deceased, the reputation of only one or two has remained as high as the contemporaneous estimate.

Of the prominent statesmen of our country, such as Calhoun, Clay, Seward, Crittenden, Douglas, Sumner, and others that could be named, while time does not allow in a paper like this of detailed discussion, my general conclusion would be that, possibly with the exception of Calhoun, no one of them is estimated to-day as highly as he was by his contemporaries.

The same may be said of a number of English statesmen who in their day were considered great men. The modern estimate of most of them is not as high as that of their contemporaries, although of some, such as Cromwell, William III, Burke, Chatham, and Charles James Fox, it may be said that they have a higher rank as statesmen now, than during their lives.

One class I omit entirely, because it seems pretty clear that contemporaneous opinion in their case has remained practically unshaken — that is, great military leaders. Probably the conspicuousness of their careers or the fact that success or failure was determined in their lifetime led to a clearer contemporary judgment. While opinions differ as to their comparative merits and their moral characters, it appears to be true that military men of the first rank who were considered great

by their contemporaries have almost invariably held their positions in the view of later generations.

That can hardly be said of those who in their time were considered great poets, novelists, or writers. While some of them have held their own, or even increased their reputations, the fashion or taste of later generations has worked havoc with the contemporaneous opinion of the greater number.

I have recalled to your minds these few typical cases, mostly from our own country because more readily recognized, as a sort of test of the question whether or not any general rule can be found. From these examples and others that may readily occur to you, can any conclusion be drawn? I fancy there can be, and that it can pretty safely be said that contemporaneous opinion of really great men — men whose fame is permanent enough to reach down through later generations — has been found to be substantially correct, leaning rather to an under- than an over-estimate, but when we come to a lower standard of greatness that the opinion of the times as to men eminent in their own day and generation, but not to be classed as the world's great leaders, is unreliable and has not unfrequently to be reversed.

The exceptions seem to be with men who in their day achieved a high degree of *un*popularity, but who made their mark by their ability and force of character. Contemporaneous opinion in their cases — unless the men were conspicuously bad or corrupt — appears to be utterly untrustworthy. For many who were the subject of temporary prejudice or dislike have survived the storm of contemporaneous detraction and abuse, and by their nobler qualities won, if not the approval of later times, at least a more charitable consideration. These cases are so frequent as almost to establish a general rule.

In so short a paper as this I cannot pretend to a thorough discussion of the subject. It is a most interesting study, and I have no ground for quarrel if the views I express fail to carry conviction; realizing, as I must, that generalizing upon such a subject is a hazardous undertaking, and lays one open to the charge that too few instances have been considered to permit of safe conclusions.

THE SALE OF MATCHEBIGUATUS, 1644.

Mr. LORD exhibited a manuscript signed by Edward Winslow and said:

At the March meeting of this Society in 1878,[1] the President, Mr. Robert C. Winthrop, communicated an original letter of Edward Winslow, the Pilgrim Governor, addressed to

Mr. Bradford, Mr. Prence, and the rest of our ancient partners:

After divers and sundry treaties with Mounsier Latour and sundry the gentlemen of Boston concerning our loss and wrong at Machebiguatus by Mounsier D'Alney, this last of the month, and last of the week at afternoon, I have made over our right and title to the Fort there, &c., to John Winthrop, Junior, Esq., Capt. Major Edward Gibbons and Capt. Thomas Hawkins, of Boston, their heirs, associates and assigns. And because I cannot stay to perfect the things, Mr. Winthrop, Junr. is bound to me on the behalf of the rest, that if Mounsier Latour shall not pay unto me to your and my [*illegible*] use, the sum of two hundred pounds sterling upon the taking of the said Fort, at the house of Valentine Hill, merchant of Boston, if so much goods be in it, or if not, in one or two years after the taking of the same, in beaver or moose skins, and give not bond obligatory for that end forthwith, that then the said deed by me made to be void and of none effect, or else to stand in full power, force, and virtue.

Now the thing desired by them and me is that yourselves, the rest of the partners therein, will be pleased to manifest your consent by some joynt writing herewith. Thus having nothing more to write thereabout take leave and remain

Yours as his own,
EDW. WINSLOW.

CAMBRIDGE, this last of Aug., 1644.

The editors' note explains that "The 'loss and wrong' which the Plymouth people sustained by D'Aulney occurred at their fort, in what is now Castine, on the Penobscot River, in 1635," and cites as references for a full account of the event Bradford's *History*, Winthrop's *History*, and Wheeler's *History of Castine* In that note the editors further say: "We find no reference, either in Bradford or Winthrop, to the settlement effected by Winslow, as described in this letter."

[1] 1 *Proceedings*, XVI. 111.

I submit to-day for examination, and for publication in our *Proceedings*, the original instrument, signed by Edward Winslow as present Governor of Plymouth, to John Winthrop, Jr., Sergeant Major Edward Gibbons, and Captain Thomas Hawkins, of Boston, the three persons named in the letter. This original document in the handwriting of Edward Winslow, and bearing his signature and seal, was recently presented to the Pilgrim Society by Mr. Theodore P. Adams, and reads as follows:

Whereas about ten yeares since Mouns'r D'Aulney under a pretence or color of Commerce did violently and injuriously take a possession out of the Hands and custody of the Agent and servts of Edward Winslow William Bradford Thomas Prence and other their partners at Matchebiguatus in Penobscot together with divers and sundry goods to their great losse, even to the valew of five hundred pounds or thereabout. And forasmuch as no satisfaccon hath ever been made and tendred by the sd Mouns'r D'Aulney for the sd possession or goods or by any his Agents The sd Edw Winslow for himselfe and partners hath and doth by these presents fully surrender and make over his and their p[art] I[nterest?] right and title not onely to the said possession of lands in Matchebiguatus aforesaid but to their Fortificacon howsing losse and damages rights and priviledges thereunto belonging to Joh. Winthrop junior Esqr Serjant Major Edw. Gibbons, and Capt. Thomas Hawkins all of Boston in New Engl. to them their heires Associates and Assignes for ever. Allowing and investing them with all such lawfull power by force of Arms or otherwise to recover the said Possession Fortificacon howsing lands goods etc. to them the said Edw. William, Thomas, and other their partners at Machebiguatus aforesaid appertayning. And the same to have and to hold ocupy and enjoy to them the said Joh. Winthrop [junior] Esq. Serjant Major Edw. Gibbons and Captaine Thomas Hawkins their heires Associates and Assignes for ever together with all such priviledges as appertayneth thereunto. In witnes whereof the said Edward Winslow hath put to his hand and seale the last of August 1644

Per me EDW: WINSLOW *Gov'r at present*
(*Seal*) of *New Plym.*

Witnesses hereunto
HERBERT PELHAM
JOHN BROWNE

The trading settlement at Penobscot was on a peninsula, later known as Matchebiguatus, or by contraction Bagaduce

Point, at the mouth of the Penobscot, and in 1631, upon the death of Ashley and the discharge of Allerton, this trading post became wholly at the disposal of the Pilgrims.

In 1635 D'Aulney came into the harbor of Penobscot and took possession of the trading house in the name of the King of France, and compelled Mr. Willett, the agent of the Pilgrim company there, to approve of the sale of its goods to him, but made no payment for them, as Bradford states: "For the house and fortification, etc. he would not alow nor accounte anything, saing that they which build on another mans ground doe forfite the same."[1]

Willett returned to Plymouth, reported the incident of the robbery of its goods by the French, involving a loss to the Colony of five hundred pounds, whereupon the Plymouth company, after conference with the Massachusetts Bay Company, hired a ship of three hundred tons, well fitted with ordnance, and agreed with the master that in consideration of 700 pounds of beaver he was to surprise and drive out the French, and put the Plymouth men in full possession of the trading house and goods.

With Captain Girling, the master of the ship, they sent their own bark and some twenty men with Captain Standish, to aid him if necessary, and then if the house was recaptured to pay him the beaver, which they prudently kept aboard their own bark.

The attack failed by the mismanagement of Captain Girling, and his powder having been exhausted he sent Captain Standish to the next plantation to procure more powder. Standish, learning that Girling's plan was to seize on the bark and surprise the beaver, sent the powder to Girling and returned to Plymouth with his bark and beaver. Girling did not renew his assault, "but went his way; and this was the end of this business."[2]

In the nine years that followed the Plymouth Company was unable, unaided by the Massachusetts Bay Company, to recover the trading post or secure any redress, and finally in 1644 conveyed, by the instrument signed by Winslow, its title to the property and its claims for damages to Winthrop,

[1] Bradford, *History* (ed. 1912), II. 207.
[2] *Ib.*, 211.

Gibbons, and Hawkins for two hundred pounds, a somewhat pitiful return for their substantial losses.

Mr. Ford in his note says that:

> In August, 1644, Winslow went to Boston and there held "divers and sundry treaties with Monsieur Latour and sundry the gentlemen of Boston," concerning the loss and wrong committed by Aulnay in taking the Plymouth fort at Penobscot. The resulting agreement is not clearly expressed in Winslow's letter, printed in *Mass. Hist. Soc. Proceedings*, XVI. 111, but the terms of the "deed," as given in the note on pp. 220–221 of the second volume of Savage's *Winthrop*, are illuminative.[1]

Mr. Savage in his note [2] refers to a "curious document given me by the late Judge Davis," which document he sets out in the note in full, and is the instrument signed by Winslow, which is here submitted. When this document was first called to my attention it was in an envelope with a copy of the paper in the handwriting of Mr. Savage.

In the instrument as published in Savage's note a singular and obvious error appears. This instrument as printed in the note begins with the recital "Whereas about two years since." It should read *ten* instead of *two*, as appears by an inspection of the original; and moreover the event referred to was the capture by D'Aulnay of the Penobscot trading post, which occurred in 1635, and not about two years prior to the date of the instrument, which is August 1, 1644.

The whole story of the loss by the Plymouth company of their fort on the Penobscot and their negotiations with the Massachusetts Bay Company for its return, is so fully told in the texts of Winthrop and Bradford, and in Mr. Ford's notes, that a more extended account is unnecessary here. The seal on the instrument used by Winslow is also worthy of passing notice. The design is that of a pelican feeding its young, which appears to have been the seal used by Winslow while in this country.[3]

[1] Bradford, *History*, II. 208.

[2] Winthrop, II. 220.

[3] Morton, *New England's Memorial* (Davis ed.), 468, 481; 4 *Mass. Hist. Collections*, VI. plate 11; 1 *Proceedings*, I. 1 *n*, 284 *n*.

Mr. MURDOCK read the following paper on

HISTORIC DOUBTS ON THE BATTLE OF LEXINGTON.

On the 2d of September, 1824, Lafayette was a visitor in Concord, and the Hon. Samuel Hoar took occasion to remind him in a public address that he stood upon the spot where "the first forcible resistance" was made to the British arms. This simple assertion proved in a measure epoch making. A half century had passed since the great events to which Mr. Hoar referred, but his claim for Concord roused a storm of protest in Lexington. A bitter controversy ensued, and local pride and local historians were stirred to an extent that imperilled historic truth. The town of Lexington took official cognizance of the Concord claim, and Elias Phinney, Esq., was charged with the task of demonstrating to all impartial minds that it was at Lexington and not at Concord that the embattled farmer fired that far-echoing shot that heralded American independence. To assist Phinney in his work depositions were extracted from ten aged citizens of Lexington, some of whom fifty years before had attended that early morning roll-call on the Common. Those venerable men, who in 1775 had been anxious to prove the peaceful intent and behavior of the minutemen, were now summoned to lend color to quite a contradictory theory. The Hon. Edward Everett, who delivered the oration at Concord on the fiftieth anniversary of the battle, was placed in a delicate position, and disclaimed any intention of pronouncing "on questions in controversy." Phinney's pamphlet on the battle appeared in 1825. Concord had old men of her own, and they were summoned into the lists to support contentions put forth by the Rev. Ezra Ripley, who published his anti-Lexington tract in 1827. The whole dispute seems strangely trivial to us now. It is hard to account for the time and ink that were wasted in the fruitless controversy, the recriminations and bitterness of spirit that involved the clergy of neighboring towns, the wild straining at historical gnats and the wholesale swallowing of legendary camels, and all because of the phrasing of one sentence by the Hon. Samuel Hoar. Lexington had not always been as sensitive as she was in 1824.[1]

[1] The *Memoirs of Major-General William Heath* made their appearance in 1798 and contained an account of the 19th of April that was entirely in har-

No one in Concord had impugned the valor of her minutemen, and it was as clear then as it is now that Captain Parker's company did their full duty on the 19th of April, 1775, and that in a crisis when courage and resolution were animating the hearts of thousands of Massachusetts men they well deserve the title of the bravest of the brave.

Two results of this controversy are worth noting: the first, a development of local interest and enthusiasm in the subject that remains unimpaired as bitterness has waned; the second, the accumulation of a mass of questionable evidence that in exaggerated forms has gradually become accepted as history. It was certainly a keen revival of interest that started Phinney on his task, and every one of sufficient years in Lexington must have racked his brains for some memory of the great day. In 1863 the poet Longfellow became inspired with the subject, and in glorifying Paul Revere innocently robbed William Dawes and Dr. Prescott of well-earned honors. "Tradition, legend, tune, and song" all played their part in the reconstruction of the Lexington story, until the schoolboy of my generation, however dull in history, knew for facts that Revere rode into Concord before dawn with news that the regulars were out, and that Major Pitcairn stirred his whiskey in the Concord Tavern with blood-curdling threats that would have done credit to a pirate king.

The new evidence based on memories of fifty years ago served no good historical end. We know that old men forget. We know too that they sometimes chatter glibly of events that never happened, or, as Shakespeare has it, "they remember with advantages." Is it too much to say that the depositions of 1824, whether taken in Concord or Lexington, must be regarded in a different light from those of 1775, and that in them it is hard to sift the wheat from the chaff or to weigh the probabilities as to truth or error? To my mind material of this sort should be reserved for appendices and illustrative notes and not included in the body of an historical work. Bancroft thought otherwise, and successive historians have been of his opinion.

By way of illustrating what I have said concerning the evolution of the Lexington story let me have recourse to a

mony with the claim of Mr. Hoar. Moreover, the Lexington company came in for a word of criticism that will be found quoted in a subsequent note.

recent edition of Hudson's *History*, published by the historical society of that town. This is embellished with four views of the battle of Lexington — three reproduced from rare prints, the fourth from Sandham's painting, which is the property of the society and hangs in the Town Hall. The earliest print to be reproduced is that of Doolittle, engraved in the fall of 1775, and it is to be noted that Pendleton, Billings, and Sandham all portray the scene from the same spot, giving the same landscape that Doolittle depicted. You know the story of this Doolittle print, now so rare as to torment the dreams of collectors: how Doolittle and Earl came up to the Boston siege in a Connecticut regiment; how in the summer they gained permission to visit Lexington and Concord; how Earl sketched the scenes and invested them with the military episodes of the day, and how Doolittle engraved the sketches and offered them for sale at James Lockwood's store, near the College in New Haven. Crude in draughtsmanship and engraving they yet form a series of inestimable historical value. The work of provincial artists serving in Washington's army, they give us in pictorial form the story of Lexington and Concord as it was accepted in the American camp. If you will examine the faithful reproduction of the Doolittle print in the book I have mentioned, you will notice that the British are firing by platoons and that the Lexington company is dispersing in all directions. Even the magnifying glass fails to reveal any member of that company in an attitude of resistance; no suggestion of a return fire or even of loading. One wonders why the title was not engraved the massacre instead of the battle of Lexington. Evidently our Connecticut soldiers felt that the facts of the case or political expediency justified such a treatment of the subject. Let me call your attention further to the fact that our reproduction of the Doolittle print is not from the original of 1775, but from the reduced replica which Doolittle executed in 1832 for Barber's *History of New Haven*. There could have been no political considerations to influence him at that time. Lexington was then stoutly asserting the belligerency of her minutemen, and yet Doolittle varied in no detail from his conception of nearly sixty years before. It is still a massacre, perpetrated upon armed but unresisting men.

The next picture to be noted in chronological order is Pen-

dleton's lithograph after Doolittle, executed about 1830. Pendleton had evidently given heed to the current controversy and to the Lexington depositions of 1824. The British are firing, the minutemen are dispersing as Doolittle portrayed them, but eight devoted souls are still facing their enemies, six of whom are returning the British fire while two are loading. This is the picture which stirred the ire of Lemuel Shattuck of Concord as a misrepresentation calculated to perpetuate error.[1]

When we come to the Billings sketch, executed a quarter of a century later and which was used to adorn the first edition of Hudson's *Lexington* in 1868, we find the dispersing confined to the extreme left of the line, while the firing has been extended to a round dozen or more. The Sandham painting of 1886 throws off all restraint and departs definitely from the Doolittle idea. Here at last is a battle indeed. Where in Sandham's spirited work is there any sign of wavering, any suggestion of dispersing? The line holds firm from end to end, while, unterrified by the running blaze of British musketry and the sight of stricken comrades, the minutemen stand grimly to their work, emptying their firelocks at close range into that broad and glittering target that is offered by the Light Infantry. Is this a true picture of what occurred on Lexington Common, or does it violate the truth beyond the limits of poetical license? I shall have occasion to refer to this picture again, but for the moment I leave this query with you as suggesting the basis for an historic doubt.

Sir George Trevelyan, in commenting upon Concord and Lexington, says: that "pages and pages have been written about the history of each ten minutes in that day, and the name of every colonist who played a part is a household word in America." He might have added that the result of this vast torrent of words that has accumulated since 1825 has been to obscure simple historical facts commonly accepted before that time,

[1] Shattuck's comment contained in the appendix to his *History of Concord*, published in 1835, is as follows: "A new lithographic edition of Doolittle's Historical Engraving, first published in 1775, also appeared. In the original no one is represented as firing at the British soldiers at Lexington, but several as dispersing and some as slain. As this would be rather an awkward presentation of *a battle*, the editors, as is sometimes the practice of historians, thought fit to improve the original to suit their views of what the engagement should have been. From this picture woodcuts have been prepared, which appear in some school books to perpetuate error."

and to create a tale that does not impress one as founded upon human nature. It is natural and right that the names of colonists who espoused the popular cause should be cherished in American households, but it is a pity that after the lapse of nearly a century and a half other conscientious colonists of different ways of thinking should still be regarded as traitors and dishonest persons. The actors at Lexington and in the preceding events have become segregated into two groups — in the one the heroes, in the other the villains. It has been the tendency to portray our patriot ancestors as patient, long-suffering men of God who, free from the selfishness and greed of our erring species, adored liberty and justice and yearned to lay down their lives in their defence. This theory has been persisted in for several generations, although Washington in his correspondence has furnished us with some very substantial evidence to the contrary. I am not sure that it is a kind thing to cast ancestors in such parts. They do not suggest the flesh and blood of a few generations since, and as they pose pompously in statuesque attitudes and utter heroics of evident modern origin, they fail to convince, and one is conscious of the dawning in his mind of an historic doubt. And then the villains! They are the real villains of the golden age of melodrama. There is Hutchinson, secretly forging the shackles of slavery for his honest neighbors, abetted by the malice of remorseless placemen; Ruggles, urging his wicked scheme to oppose by force "the peaceful picketing" of disinterested patriots; and then there are the villains in scarlet, drunken minions of a king thirsting for innocent blood. There is the hint of real flesh and blood here that we miss among the heroes and yet to some of us the question will arise, Were these men really all so bad? If some of the heroes had cursed, or if a villain or two could have uttered a repentant prayer, the whole pageant would have seemed more probable. As it is, we turn from the scene, carrying with us a sense of misgiving that is akin to doubt.

Lest I be accused of exaggeration let me quote a characteristic passage from Hudson's *History of Lexington*, in which he apostrophizes old Middlesex as the Monumental county: "The towering obelisk on Bunker Hill which looks down in an awful frown upon British vandalism, and in pious veneration upon

American valor; the modest shaft at West Cambridge, which bespeaks alike the barbarity of the retreating foe and the heroic gathering of the friends of freedom, ready to do and suffer in her cause; the humble monument at Lexington proclaiming the undaunted firmness of the minutemen and the cowardly spirit of the invaders of their rights," etc., etc. Mark how rigidly the line is drawn: on the one hand piety, valor, undaunted firmness, and the readiness to do and suffer; on the other vandalism, barbarity, and cowardice. Hudson wrote in 1868, and the sentiments he uttered have not become extinct. You will find them still, particularly in local histories and in books designed for youth.

It has seemed to me that our revolutionary drama would be more fairly and clearly presented if we recognized that Massachusetts was divided against itself on the great issues of the day, and if the Loyalist element were given some speaking part upon the stage. While their cause and contentions have not been altogether ignored, they have been treated with scant courtesy, and their views and influence have never been properly compounded with the general mass of historical matter upon which our revolutionary story is based. The Loyalists of Massachusetts had just as good New England blood in their veins as James Otis or Dr. Warren, and whoever reads the scholarly pages of Hutchinson's history can hardly fail to recognize that the detested Governor was quite as much a lover of his native land as either John Hancock or Samuel Adams. The Loyalists were not all brave or unselfish men. Like their enemies they were compounded of good and evil, but they included in their numbers many of the most distinguished men in Massachusetts, who but for the evil days upon which they fell would have gone down in history as favorite sons. Some of them contributed incidents to our annals that might well have been recorded and remembered with pride. The story of Paul Revere as imagined by Mr. Longfellow stirs the most sluggish blood, and half the world knows it by heart. I can recall another episode that has to do with American grit and courage, but it concerns Colonel Saltonstall, of Haverhill, and has never been embalmed in verse.[1]

[1] Brief mention of Colonel Richard Saltonstall's encounter with the mob in 1774 will be found in 2 *Collections*, IV. 164.

Let me say at the outset that I am in possession of no evidence regarding my subject that has not been accessible to historians for years. It is not my purpose to laud villains or to depreciate heroes, but as all the actors who played their part at Lexington were Englishmen and professed loyalty to the British King, I shall discuss the episode as belonging as much to English as to American history. The Tory and the Redcoat will be given a fair hearing on the stand. The third volume of Hutchinson's *History* will be treated with as much respect as letters and speeches by any member of the Adams family. I shall assume that the Drapers published as honest a newspaper as Edes and Gill, that an official report by Gage stands in the same category as a proclamation by the Provincial Congress, and that a letter written by a British officer to relatives or friends at home is as reliable evidence as a patriot deposition that bears a score of signatures. With this declaration of my purpose let us review together some of the political transactions that occurred in Boston during the ten years that preceded 1775. I shall touch briefly upon those events with particular reference to their influence upon the temper and discipline of the King's troops, deeming them more or less essential to an understanding of the encounter that stained Lexington Common with blood nearly a century and a half ago.

It was in 1765, as a result of the Stamp Tax agitation that Hutchinson's beautiful house in the North End was destroyed by an infuricated and drunken mob, and with it that noble library teeming with treasures of Massachusetts' historic past. A mass meeting at Fanueil Hall condemned the outrage, but when suspected offenders were lodged in jail they were promptly released by a more orderly but equally determined mob. When the Assembly convened it was clear that the members were swayed by other considerations than those of simple justice. The claims of Hutchinson and other sufferers for compensation for losses sustained in the riots were laid over for one session and then voted only upon consideration that free pardon and an immunity from prosecution should be extended to the rioters themselves. It was this attitude of the Assembly as representing the constituencies of the Province, together with renewed disturbances, that brought the 14th and 29th regi-

ments to Boston in 1768. A fervid flood of oratory immediately proclaimed that their mission was to reduce to abject slavery the inhabitants of the good town of Boston. The harassed squad of Redcoats before the Custom House fired upon the mob in 1770 and deprived the town of some of its undesirable citizens. In the face of popular clamor the two regiments were withdrawn to the Castle. Captain Preston and the soldiers comprising the squad were turned over to the civil power and brought to trial in the fall. In the meantime, immediately on the perpetration of the so-called massacre, the town hastily collected depositions from sundry citizens to prove that the fire of the troops was unprovoked, embodied them in a printed pamphlet, copies of which were forwarded to England with a few of Paul Revere's prints in which Captain Preston was pictured in an unmistakably bellicose attitude. It is interesting to compare the depositions printed in the *Short Narrative* of the town with the evidence produced at the trial of the soldiers. As you know, Captain Preston was acquitted and all of the soldiers save two, who were convicted of manslaughter. Much stress was laid in the *Short Narrative* upon evidence that shots were fired from the windows of the Custom House during the confusion in the street. We read in the trial of the soldiers, "published by permission of the Court," that the jury acquitted the accused persons "without going from their seats," while from Hutchinson we learn that the principal witness was held for perjury "and by his own confession he was convicted."

The removal of the troops to the Castle was a deep humiliation to the King's officers, for which the subsequent acquittal of Preston and the soldiers was only a tardy and insufficient reparation. The 14th and 29th were derided in Parliament as "the Sam Adams regiments," and it is reasonable to assume that Boston came to be regarded with loathing in every mess-room of the British army. Parliament held tenaciously to its stupid blundering course, Hutchinson strove vainly to find a way to satisfy the disaffected populace that was consistent with his duty to the King, the tax on tea stimulated the popular ferment, the Port Bill was passed, and in 1774 Hutchinson sailed for England, Gage coming in as military Governor with a half-dozen regiments at his back.

Gage found a serious situation in the Province. Upon his prorogation of the Assembly it promptly resolved itself into a Provincial Congress, independent of his authority. Committees of Safety and Committees of Correspondence existed in every community for the protection of American liberties, or, as Gage saw it, for opposing the lawful acts of Parliament. The energy and secrecy developed in these organizations seem to give the lie to the aphorism that efficiency and democracy have never been made acquainted.

Upon one essential point we find Samuel Adams and General Gage in agreement, that the good people of Massachusetts Bay were in danger of losing their liberties. We know well the contentions of Samuel Adams that those liberties were threatened by the high-handed methods of Parliament instigated by the corrupt and selfish clique that surrounded the King. The contributions to the newspapers of the day, the sermons that thundered from a hundred pulpits, the orations in the Old South Church, all proclaim the existence of a tyranny unworthy of the dark ages in its heartless duplicity and savage barbarity. And yet Gage and his officers looked abroad and beheld a land well endowed by nature and improved by the thrift and toil of a hardy and self-governing population at whose doors neither tyranny nor poverty had ever knocked. The Stamp Act and the tax on tea might or might not be wise, but the uproar about slavery and oppression was to the soldier merely a blatant fraud. He resented the imputation that he came to Boston as the instrument of tyranny, and he knew that there were thousands in the town who welcomed his presence, even as an enforcer of the Port Bill and the Regulating Acts. Then from the country came scores of quiet folk whose lives had been made intolerable in the communities in which they lived. Their crime consisted in an open recognition of the authority of the King and Parliament. Around the candle-lit mahogany in many an old Boston mansion the officers of the army listened to tales of persecution, of threatenings, boycotts, and physical intimidation by mobs. Peace-loving folk of old American stock recited their woes as signers of the complimentary address to Governor Hutchinson, how they had been proscribed in the public press, how they had been ostracized and harried by strong armed neighbors, and how with visions of tar and

feathers before their eyes they had recanted, apologized in the public print, that they and theirs might live in peace in the land of their nativity. There were moderate patriots in those days who deplored the outrages, and who dreaded that they would benefit the Tory cause by rendering a better cause unattractive. In the army, with its memories of 1770, the effect was to arouse a resentment that soon blossomed into contempt and hate. Earl Percy, whose principles were all of the Whig persuasion, had come over well affected toward the Province, but before he had been in Boston two months he was writing home: "the people here are a set of sly, artful, hypocritical rascalls, cruel and cowards. I must own I cannot but despise them compleately." Captain Evelyn, a less conspicuous officer, writing to his reverend father in 1774, declares: "You who have seen mobs, generous ones compared to these, may have some idea of the wretched situation of those who were known or suspected to be friends to the King or government of Great Britain. Our arrival has in a great degree restored that liberty they have been so long deprived of, even liberty of speech and security to their persons and property, which has for years past been at the mercy of a most villainous mob." So you will see how natural it was that the army came into sufficient agreement with Mr. Samuel Adams to declare that dangers did threaten the Goddess of Liberty in the Province of Massachusetts Bay. Surely no milder military rule was ever maintained than that of General Gage. We have it on good Provincial authority that his attitude was distinctly conciliatory, and his demeanor toward the civil officers in the town respectful even to the point of deference. The local press bristled with attacks upon the government he represented, and yet no move was made toward censorship or suppression. Well-known patriot agitators came and went, but their movements and speeches were both ignored. In the meantime on every village green the Provincial militia was drilling, and the towns under the direction of the Provincial Congress were busily engaged in collecting ammunition and supplies for war. Outside of Boston the courts were overawed. Judges and magistrates were waited upon by mobs and forced to resign their trusts, while soldiers in Boston were systematically seduced to desert. The army became restless, and it was urged

that the Governor's leniency was alienating thousands of loyal citizens who naturally looked to him for protection. But Gage persisted in his watchful waiting until it was whispered about in military circles that he was no better in his high office than "an old woman."

During the period of military occupation preceding the massacre there were frequent affrays between the soldiers and the townspeople, who, it seems clear, were for the most part the aggressors. Under Gage's administrations there were no popular tumults comparable to those of earlier days because the military were in dominating force. On the other hand, because of the discontent and the consequent deterioration of discipline in the army, the soldiers were guilty of occasional disorders, and certain young officers also became involved in affairs that disgraced their uniforms. The General had grave reason to deplore the potency of American liquor, a copper's worth of which was sufficient to convert a stolid grenadier into a raging animal defiant of the laws of God and man. Complaints from the selectmen or from aggrieved citizens were respectfully received at headquarters, and stern punishment was meted out to the offenders in the form of court martials and floggings on the Common. Wherefore the army grumbled that the only element exempt from punishment were the tar and feathering Liberty boys, while his Majesty's loyal subjects were left to be harried and hounded, and his Majesty's troops for trifling offences treated to floggings in the presence of their enemies. Human nature being what it is, we can easily comprehend the complaint of the army that between the sedition of Samuel Adams and the weakness of Gage a soldier had but a pitiful standing in Boston.

It is probable that the sentiment of the army was not altogether fair to Gage. The military problem was not as simple as it appeared to a young lieutenant smoking his pipe in a regimental messroom. The effort to impress the people that the army were their friends was perhaps worth the trying. There were few instances from the time of the destruction of Hutchinson's house in 1765 to the coming of the troops in 1774 where political offenders against the public peace were brought to justice by the civil authorities. Gage was aware of this, and in punishing his soldiers for misdemeanors he may have looked

for some appreciation of a policy of even justice and fair play. Whether Lord Clive would have acted differently had he lived to command in Boston is an interesting matter for historical speculation; but the time came when under the stress of local circumstances, reinforced perhaps by instructions from London, Gage felt himself obliged to take some steps to assert the outraged dignity of King and Parliament. So the expedition to Concord was decided upon and every precaution taken to ensure secrecy. It was an arduous task, involving a practically continuous march of thirty-five miles under service conditions. The Grenadiers and Light Infantry received the necessary orders, Smith of the 10th was assigned to command, and Bernard of the 23rd ordered to the Grenadiers. There were more than a score of lieutenant colonels and majors of foot eligible for the Light Infantry, and when it was learned on the morning of the 19th of April that Pitcairn of the Marines had gone out as the General's choice, I fancy there was a stir in the Boston garrison. Why was Pitcairn thus honored? It is of course a mere matter of speculation, but as the fateful hour approached it is possible that the humane General became oppressed with a fear of possible bloodshed. The people were possessed with a dangerous fanatical enthusiasm, and he knew that even among his officers there was a sense of irritation, a keen desire to "have at the damned dogs." So while it was not customary for Light Infantry to look to the Marines for commanders in the field, Gage called for Pitcairn, an officer who not only was a rigid disciplinarian with a long and honorable record of service, but also a man whose humanity and tact had won him the love of his command and the respect of people of all shades of political opinion in the town. Leslie, Nesbitt, Small, and Mitchel were all good men, but the official knock came at Pitcairn's door. Perhaps the Major laughed as he read his orders and thought how the infantry had been slighted; perhaps his broad shoulders squared a bit as he thought how the marines had been honored. I fancy (despite our local tradition) that he had a devout Scotch nature, and as he buckled on his sword belt he may have breathed a simple prayer to be sustained in the work of the coming day — that it might not come to the shedding of English blood.

And now, as we shift the scene to Lexington, let me ask if it

has ever occurred to you to question the wisdom of sixty or seventy men going out and forming on the level ground of the Common, in plain sight of an advancing force of eight hundred of their enemies? There was reason for posting guards at the house of Jonas Clark a few hours before, but when Smith's column entered Lexington, John Hancock and Samuel Adams had withdrawn to safer quarters and no one else stood in danger. Captain Parker stated in his deposition in 1775 that he ordered the militia "to meet upon the Common to consult what to do, and concluded not to be discovered nor meddle or make with said regular troops unless they should insult or molest us." How could he expect that sixty or seventy armed men, grouped between the meeting house and the Buckman Tavern, should fail of discovery by troops passing along the road but a few steps away, and how could he imagine that these troops would ignore them, standing as they did with shotted arms and in a posture of war?[1] The action of the Concord companies later in the day throws Parker's tactics into stronger relief. Concord had more than twice as many men under arms as Lexington, but on the appearance of the British they abandoned the town and retired to the high land above the North Bridge. That move is easily comprehensible and was based upon sound judgment. Yet Captain Parker was a soldier of experience, and he chose a post for observation and consultation where his men would be almost brushed by the scarlet trappings of the passing enemy. Had the village been fired, had women and children stood in danger of outrage and death at the hands of a brutal soldiery, I imagine that every Lexington man would have died in defence of his home and fireside; but no outrage or insult had been reported as attending the British march; high land and thick woods, admirable spots for observation and consultation were close at hand, and yet Parker and his men stood quietly by the wayside inviting insult or

[1] General Heath commented on this fact as follows in his *Memoirs*, published in 1798: "This company continuing to stand so near the road, after they had certain notice of the advancing of the British in force, was but a too much braving of danger; for they were sure to meet with insult or injury, which they could not repel. Bravery when called to action should always take the strong ground on the basis of reason." Mr. Hudson in the first edition of his *History of Lexington*, published in 1868, sought to justify the action of the Lexington company, but his arguments were quite inadequate and are apparently omitted from the new edition issued by the Lexington Historical Society.

molestation. Has it ever occurred to you that Parker acted under orders, that the post he took was not of his choosing? Samuel Adams, the great agitator, had been a guest at Parson Clark's for days, and he was the dynamo that kept the revolutionary machinery in motion. The blood shed by Preston's men in King Street had been ably used by Adams to solidify the popular cause, and now did he feel that the time had come to draw once more the British fire? It is perhaps a foolish query, but it is engendered by an historic doubt. I cannot satisfy my mind that Parker was the responsible agent in the affair. At all events it was a group of brave men that gathered with the Lexington captain on the green that morning, the first flush of dawn lighting their bronzed faces as they stood looking squarely into the face of death.

Since both parties stoutly maintained their innocence it is a difficult matter to decide who fired the first shot on the 19th of April. It was a question of serious political importance in 1775, but today it is merely a matter for interesting historical speculation. The Provincial Congress followed the example of the town of Boston in 1770, hastily collected depositions from all the Provincial actors and spectators, published them in the press, and hurried the information off to England in Captain Derby's packet. The depositions were taken for one express purpose, to show that the British committed a bloody and unprovoked assault upon innocent and unoffending men. The unanimity upon the vital point was as impressive as in the massacre evidence of 1770, and it is only an occasional witness who strays far enough away from the main issue to throw any light upon the details of the transaction. Let us recall the witnesses for a hasty examination. Nearly fifty men of Parker's company subscribed to two blanket depositions. They declared in effect that the company which was gathering dispersed on the approach of the troops. "Whilst our backs were turned on the troops, we were fired on by them, . . . not a gun was fired by any person in our company on the regulars to our knowledge, before they fired on us."[1] This final clause intimating that at some stage of the affair Lexington men did fire, should be especially noted, as the same hint is contained in nearly all the depositions. *Captain Parker* testified that upon

[1] Deposition of Nathaniel Mulliken and thirty-three others.

the sudden approach of the troops he ordered his men "to disperse and not to fire. Immediately said troops made their appearance and rushing furiously, fired upon and killed eight of our party without receiving any provocation therefor from us." *Smith*, a spectator, "saw the regular troops fire on the Lexington company," which was "then dispersing." There is no hint from the foregoing group of witnesses of any verbal preliminaries to the firing of the troops or any suggestion as to whether the firing was spontaneous or the result of orders. *Tidd* and *Abbot* were spectators. They saw the body of troops "marching up to the Lexington company which was then dispersing; soon after, the regulars fired first a few guns, which we took to be pistols from some of the regulars who were mounted on horses, and then the said regulars fired a volley or two." *Mead* and *Harrington* also state that pistol shots from the officers prefaced the British volleys. *Robins* says nothing of pistol shots, but has a good ear for speech. They came "on a quick pace towards us with three officers in their front on horseback, and on full gallop towards us, the foremost of which cried, '*Throw down your arms*, ye villains, ye rebels,' upon which said company dispersing, the foremost of the three officers ordered their men saying, 'Fire, by God, fire,' at which moment we received a very heavy and close fire from them." *Winship*, who stood as a prisoner in the midst of the troops, observed an officer at the head of the troops "flourishing his sword and with a loud voice giving the word Fire!" He says nothing of the command to disperse. *William Draper* avers that Captain Parker's company were turned from the troops making their escape by dispersing, when the regular troops made an huzza and rushed on. "After the huzza was made the commanding officer of said troops . . . gave the command to the troops, 'Fire, fire, damn you, fire.'" *Fessenden* testified that being in a pasture near by he viewed the whole proceeding from a distance of eighteen or twenty rods. He saw the three officers on horseback and heard one of them cry out, "Disperse, you rebels, immediately," at the same time brandishing his sword three times over his head. The company immediately dispersed, while a second officer more to the rear fired a pistol. The regulars kept huzzaing till the leading officer finished brandishing his sword. He then pointed his sword

toward the militia and immediately the troops fired. *Elijah Sanderson* heard an officer say, "'Damn them we will have them,' and immediately the regulars shouted aloud, ran and fired upon the Lexington company." Finally, I quote *Willard*, who viewed the event from a point near the Harrington house, and who in some respects is the most satisfactory witness of the day: "The commanding officer said something, what I know not, but upon that the regulars ran till they came within about eight or nine rods, . . . at which time the militia of Lexington dispersed; then the officers made an huzza, and the private soldiers succeeded them: directly after this, an officer rode before the regulars to the other side of the body, and hallooed after the Militia, and said 'Lay down your arms, damn you, why don't you lay down your arms,' and that there was not a gun fired till the militia were dispersed." This in effect is the Lexington case so far as the evidence of participants and eyewitnesses is concerned. Upon it was based the report of the Provincial Congress. The Province also secured depositions from Lieutenant Edward T. Gould, of the King's Own Regiment, and John Bateman, a private in the Fifty-second Regiment of Foot. Gould was wounded at Concord, captured near Menotomy as he was returning to Boston in a chaise, and he gave his testimony as a prisoner at Medford.[1] Bateman was also a prisoner, evidently of the willing sort, being taken at Lexington in the morning shortly after the departure of the troops for Concord. He declared that he "heard the word of command given to the troops to fire *and some of said troops* did fire"; also that he "never heard any of the inhabitants so much as fire one gun on said troops." This final clause was duly noted by Ripley *et al.* in urging their case against Lexington.

The evidence for the soldiers is of a different character and far less voluminous than that offered for the Province. None of it is given under oath, but it all tends to contradict the Provincial charge that the troops were the aggressors at Lexington, averring that the British fire was given in return for shots that inflicted wounds upon British soldiers. We have in the first place the reports of Gage and Smith, but these may be lightly dismissed as official documents penned under trying

[1] This testimony is referred to in a subsequent note, p. 378, *infra*.

circumstances. Then we have interesting testimony of an unofficial character in the form of letters or private memoranda by officers who were not eyewitnesses of the events they describe, but who portray the views and thought of British messrooms upon the subject. Upon these communications we may very reasonably build the theory that the British headquarters honestly believed in their contention that the Provincials fired the first shot at Lexington.[1]

We then come to the testimony of eyewitnesses, officers of the Light Infantry, who record their views in the same personal, offhand way. The most important witness in this group is Major Pitcairn. Now what did Pitcairn say? We are fortunate in having his statement through President Stiles of Yale, as stanch a patriot as one could wish, with no disposition to whitewash the British case. "Major Pitcairn," says Stiles, "who was a good Man in a bad Cause, insisted upon it to the day of his Death, that the Colonists fired first; and that he commanded not to fire and endeavored to stay and stop the firing after it began: But then he told this with such Circumstances as convince me that he was deceived tho' on the spot. *He does not say that he saw the Colonists fire first.* Had he said it, I would have believed him, being a man of Integrity and Honor. *He expressly says he did not see who fired first;* and yet believed the Peasants began. His account is this — that riding up to them he ordered them to disperse; which they not doing instantly, he turned about to order his Troops so to draw out as to surround and disarm them. As he turned he *saw* a gun in a Peasant's hand from behind a Wall, *flash in the pan without going off:* and instantly or very soon two or three guns went off by which *he found his Horse wounded* and also a man *near him wounded. These guns he did not see*, but believing

[1] Prominent in this class of testimony may be mentioned Earl Percy's letter to his father the day after the battle, and Lieutenant Colonel Abercrombie's letter to Lieutenant Governor Colden, of New York, dated May 2, 1775. "There can now surely be no doubt of their being in open Rebellion," says Percy, "for THEY fired first upon the King's Troops as they were marching quietly along." Abercrombie writes: "I have made the strictest enquiry among'st the Officers and can assure you upon honor, that not One Shott was fired by any of the troops, till their men at Lexington fired on Our Men, a Serg't, a Soldier and Major Pitcairn's Horse were wounded by those three Shotts." This testimony of Abercrombie carries the more weight because it is coupled with some very frank criticism of the behavior of the troops in the afternoon.

they could not come from his own people, *doubted not* and so asserted that they came from our people; and that thus they began the Attack. The Impetuosity of the King's Troops were such that a promiscuous, uncommanded but general Fire took place, which Pitcairn could not prevent; tho' he struck his staff or Sword downwards with all Earnestness as a signal to forbear or cease firing." [1]

Now this testimony of Pitcairn's troubled Stiles, who declared that it was a very great justification of Gage's claims, but I agree with him that it has an honest ring and meets the probabilities of the case. What would any conscientious officer have done on finding the Lexington company drawn up under arms by the roadside, at an hour when most good subjects of the King were supposed to be in bed? In the first place he might have ripped out an oath and we have evidence to the effect that this was what Pitcairn did. Here was a pretty kettle of fish for an officer bound upon a secret mission and who was due in Concord within the next two hours. That group of

[1] *Diary of Ezra Stiles*, I. 604. Pitcairn's statement is confirmed in its important details by the officers of the Light Infantry who were engaged in the tragedy at Lexington. Lieutenant Gould of the King's Own Regiment gave his testimony as a wounded prisoner at Medford in the form of a sworn deposition which was incorporated in the general body of Provincial evidence: "We saw a body of Provincial troops, armed, to the number of 60 or 70 men. On our approach they dispersed and soon after firing began; but which party fired first, *I cannot exactly say*, as our troops rushed on shouting and huzzaing previous to the firing, which was continued by our troops as long as any of the Provincials were to be seen." This testimony given under such peculiar circumstances should be read in connection with a private memorandum included among Earl Percy's papers at Alnwick in which he speaks of meeting Gould near Menotomy on the afternoon of the 19th of April. "Met with Lt. Gould of the Kings Own Regiment, who was wounded, and who informed me that the Grens and L. I. *had been attacked by the rebels about daybreak* and were retiring."

Ensign D'Berniere of the 10th Regiment left a private memorandum book in Boston at the time of the evacuation which was published in that town in 1779, "for the information and amusement of the curious." His minute is as follows: "Major Pitcairn came up immediately and cried out to the rebels to *throw down their arms* and disperse, which they did not do; he called out a second time, but to no purpose; upon which he ordered our light-infantry to advance and disarm them, which they were doing, when one of the rebels fired a shot, our soldiers returned the fire and killed about fourteen of them."

Another lieutenant of the King's Own (see *Atlantic Monthly*, April, 1877) leaves this entry in his private diary: "On our coming near them they fired one or two shots, upon which our Men *without any orders*, rushed in upon them, fired and put em to flight. . . . We then formed on the Common but with some difficulty, *the Men were so wild they could hear no orders*."

armed men created a situation that called for treatment. Bloodshed was not to be thought of, prisoners could not be handled on a rapid march, and I imagine that the Major was not long in deciding that these foolhardy fellows must be surrounded, disarmed, and then sent about their proper business. They had been ordered to disperse with appropriate epithets, and according to Captain Parker they were dispersing when the command was given. You remember that Willard testified that "the commanding officer said something what I know not, but upon that the regulars ran till they came within 8 or 9 rods of the militia." I fancy that the "something" which Willard did not hear was Pitcairn's order to surround and disarm the company. Then followed a second order, but from another officer as Willard heard it — "*Lay down your arms, damn you, why don't you lay down your arms.*" That was the crux of the whole situation. Sixty desperate men were getting away with their arms and the regulars were behind in the race. This may have been when Sanderson heard an officer say "damn them we will have them," referring of course to the arms. The situation here becomes hopelessly involved in the confusion of pistol shots and huzzas. Three Lexington men testify that they heard the command to fire. I wish that these witnesses might have been cross-examined by the eminent counsel who defended the soldiers in 1770, although it is possible that they heard aright. The Provincial with his hatred of the powers that would enslave him and the soldier burning with long-suppressed resentment were in close contact, and firing soon began. Perhaps a firelock in the hands of some stern fanatic first flashed in the pan, perhaps some hot-headed subaltern in scarlet did hiss out the words, "fire, by God, fire." At all events the volleys were British volleys, and Pitcairn came riding in, striking right and left among the levelled muskets and cursing the day that had brought the Light Infantry within the scope of his activities.

Smith's report says nothing of any breach of discipline on the part of the troops and merely states that they returned the Provincial fire. This was the easy way out for Pitcairn, as he would have been well within his rights. But as a man of "integrity and honor" he told the truth, and it is a notable fact that when Gage issued his Circumstantial Account, he based it

upon what Pitcairn told him and not upon Smith's report. Had Pitcairn known that generations of unborn Americans were to condemn him as a bloody butcher, I do not think he could have been any more chagrined or miserable than he was that day. The disgrace of it all, his men out of hand and raging like a mob, the success of the march imperilled, perhaps war begun, this was a pretty situation for an honest Major of Marines.

One of the last acts of Mr. Hudson, the historian of Lexington, was to contribute a paper to this Society in generous defense of Pitcairn.[1] He asserted indeed that he gave the command to fire at Lexington, and alleged, on what authority I do not know, that he had always admitted the fact. His finding was that despite, his profanity, the Major was a brave and humane man and a faithful servant to his King. Now Pitcairn's reputation for profanity rests solely upon those expressions alleged to have been uttered by him before the firing at Lexington. The Concord episode of the whiskey glass is an outgrowth of the tradition and not an authority for it.[2] Washington has not gone down in history as a profane man because he addressed Charles Lee at Monmouth in language that suited the occasion, and yet there is quite as good a case against Washington as against Pitcairn. Can anything be more absurd than that those resonant damns lavished by the Major upon the Lexington militia should have been allowed to cloud his character for so long in the writing of American history? And now, as I conclude what I have to say of Pitcairn, I wish that you might recall his features as they appear in that charming miniature owned by the Lexington Society. He came of an ancient Fifeshire family. His father, the Rev. David Pit-

[1] 1 *Proceedings*, XVII. 315. It is to be regretted that the Lexington Historical Society, in republishing Hudson's *History*, did not reprint this communication.

[2] This story may have originated from certain passages in Gordon's letter of May 17, 1775, which was first published in the *Pennsylvania Gazette* in June of that year. He quotes Jones, the innkeeper and jailor at Concord, as asserting that Pitcairn assailed him with profane and abusive language. These passages were expunged from Gordon's condensed account published in the *North American Almanac* for 1776, nor do they appear in his history. Hudson rejected the whiskey glass story, declaring that it rested upon "very slender evidence." The amount of cursing attributed to the British officers at Concord and Lexington in the Provincial accounts fairly recalls Uncle Toby's assertion that "Our armies swore terribly in Flanders — but nothing to this." The British achievement seems the more notable, as we have no record of any Provincial utterance that was calculated to bring a blush to the most modest cheek.

cairn, was long minister at Dysart, where the Major was born in 1722. He married Elizabeth Dalrymple, of the Dalrymples of Arnsfield, Dumfriesshire, and Dreghorn Castle in Mid-Lothian. His wife predeceased him, and after his death his orphan children were adopted by his brother, Dr. William Pitcairn of London, who always acted toward them with the affection and solicitude of a parent. Dr. Pitcairn was a man of rare social charm, one of the most distinguished physicians of his time, and he was honored with the presidency of the College of Physicians in London. In the Major's son, David, Dr. Pitcairn found a worthy successor, as the young man became the leading practitioner in the British metropolis, the envy and pride of his profession. The remains of the Major lie interred under the Church of St. Bartholomew the Less in London, side by side with those of the good brother and the worthy son.

Lieutenant Colonel Abercrombie and Majors Spendlove and Williams died with Pitcairn at Bunker Hill, and yet in all quarters it was Pitcairn's death that was regarded as the irreparable loss. "The principal killed on their side," writes Earl Percy to his father after Bunker Hill, "is Dr. Warren, Prest. of the Provincial Congress, and on ours poor Major Pitcairn who commanded the two battalions of Marines and about whom I wrote to my mother." One would like much to see that letter, with Percy's tribute to a brave friend. Burgoyne was touched and wrote to Lord Palmerston in these words: "Major Pitcairn was a brave and good man. His son, an officer in the same corps, and near him when he fell, carried his expiring father upon his back to the boats, about a quarter of a mile, kissed him and instantly returned to duty. The circumstance in the hands of a good painter or historian, would equal most that can be found in antiquity." [1] There is another contemporaneous version of the episode to which Burgoyne refers, incorrect in some details but suggestive in its spirit. It runs in this fashion: "Lieut. Pitcairn, son to the Major was standing by his father when that noble officer fell and expired without uttering a word. He looked wistfully at the Lieutenant who kneeled down and cried out, 'My father is killed, I have lost my father.' This slackened the firing of the regulars for some minutes,

[1] *Proceedings*, XLVII. 288.

many of the men echoing the words, — 'We have all lost a father.'".

The news of Pitcairn's death reached the King in July, and in August the following announcement appeared in the London papers: "Lieut. Pitcairn of the Marines (who brought his father Major Pitcairn when mortally wounded at Boston off the field of action) is appointed a captain-lieutenant of the said corps, though not in his turn, as acknowledgment of the services of his gallant father." It must have been a rare character that could arouse admiration in natures so diverse as those of General Burgoyne and the Rev. Ezra Stiles. Surely the time has come for our historians to abandon the old, baseless prejudices respecting Pitcairn, and realize and admit that when on the battle night he drew his last painful breath in that unknown North End dwelling, it was the soul of a very true and gallant gentleman that took its flight to God.

In this paper I have confessed to certain historic doubts and have commented upon some phases of the Lexington story, from its simple historic inception to the highly elaborated forms in which it is rehearsed today. We have noted the attitude and experiences of the Loyalists with a view to tracing their influence upon the King's officers convincing them that they were employed in a righteous cause. We have dicussed the long mooted question as to who gave the first fire at Lexington, and I have presented what I believe to be a reasonable version of the fateful tragedy and of the part which Major Pitcairn played therein. As Pitcairn has long been cast as the chief villain in the piece, I have been at some pains to indicate from contemporary evidence the sort of man he really was. I wish there were time to say something of Earl Percy's activities in command of the First Brigade and to comment on his conduct of the march to Boston. I must in conclusion say another word as to the alleged resistance of the Lexington company, with particular reference to the historical accuracy of Sandham's painting of the Dawn of Liberty.

Does it seem to you that the Lexington historians since 1825 have been quite fair to their minutemen of 1775? They have not only contended that a handful of their townsmen stood in arms in mute defiance of British anthority, but that they engaged in battle with ten times their number of trained troops

and exchanged shot for shot. Was it fair to insist that Parker's men should be regarded as something more than human, and that, modest and all unwilling, they should be forced to take a place among the Gods? I have alluded to the retreat of the Concord companies when they first descried the van of the British column on the road. They numbered 200 men, three times the size of Parker's force, and though they abandoned the village and took position on the high land near Major Buttrick's house, I have never heard that their tactics were called in question. Later in the day, when Buttrick marched down to the North Bridge in overwhelming force, what did the British do? Trained and seasoned veterans as they were, after one sharp exchange of shot, they beat a hasty retreat. No one has ever ventured to allege that this was not a proper and necessary military measure, and Captain Laurie, their commander, still remained in full possession of his reputation as a brave and skilful soldier. Why should Lexington have held its soldiers to standards that if spectacular were surely useless, rash, and unmilitary? Various declamatory speeches have been attributed to Captain Parker, but were he an ancestor of mine I should cling to what he claims to have said himself, that he "ordered his men to disperse and not to fire." There spoke the strong and prudent soldier who regarded his duty to his command and to the great cause he had espoused.

That the Lexington company, as a company, did not fire upon the Light Infantry on the Common is, I believe, as clearly proved as any historical fact need be; that certain individuals belonging to the company or numbered among the spectators did before or after the British attack discharge their pieces, is also clear. The British were subject to the political temptation of magnifying their losses at this point, but all they claim is that a private soldier was wounded and that Major Pitcairn's horse was struck in two places. Now it is clear that this wounded soldier tramped on with his company to Concord, while Pitcairn's horse not only carried him through the morning, but somewhere about one o'clock he was still so antic that he unseated his portly rider and ran snorting into the enemy's lines with that brace of pistols that are now among the most cherished possessions of the Lexington Historical Society. From these facts I conclude that the injuries sustained by the

British on the Common were of the order known as flesh wounds, either glancing scratches or contusions inflicted by spent balls fired from distances almost out of range. No Lexington historian has ever contended that Parker's men were deficient in the knowledge and handling of firearms or that they were bad shots. Had they disobeyed the order to disperse, and conducted themselves as they are represented in Sandham's painting, I maintain that Pitcairn's advance companies would have been torn to shreds and the hands that signed the depositions of 1775 would all have been clenched in death.

It is probable that the present version of the Lexington story is with us for a protracted stay, and so it is a matter for some regret that Phinney in 1825 should have been induced to strive against such odds to prove that this man or that let fly "the guts of his gun," and that British blood shed by Parker's marksmen did in the early April dawn anoint the sacred soil of Lexington. It is the more regrettable because unnecessary, the glory and fair fame of Lexington resting securely upon a sound and impressive basis of achievement. She might have cited the simple historic fact that while on the 19th of April she contributed hardly two per cent of the total strength that was mustered in eastern Massachusetts against the King's troops, her killed and wounded exceeded twenty per cent of the whole loss sustained. Why should a town that had done so much in the common cause have been tempted to contend for more trivial honors?

It is a singular fact that the imagination of no great artist has been stirred to portray the glory of Lexington's great day in any fashion that does not involve that ten minutes of tragic confusion on the Common. Surely there are episodes enough to fire the genius of a dozen studios, yet our painters and engravers have gone on tamely reproducing the Doolittle theme with this or that amendment. We have noted the value of Doolittle's work as performed in 1775 and repeated by him in 1832 as giving an accurate idea of the Provincial conception of the behavior of the minutemen. He was not as well circumstanced to depict the actions of the King's troops, and we have reviewed evidence indicating that those smooth and even volleys that he depicts as rolling from the well-dressed British lines were never fired. Had those lines been portrayed as broken and bulging, with scattered outbursts of musketry here

and there, with officers on foot and horseback rushing about in efforts to restore order, I think we should have something that, however discreditable to British military discipline, would be a closer approximation to the truth. There is little inspiration for the reader or the artist in such incidents as this.

Why could not Sandham in choosing his subject have turned the hands of the clock back one short half hour? I can see a picture in the gray of the early morning, the first tinge of dawn flushing the cloudless east, the flicker of guttering tapers on the dull glow of the taproom fire shining dimly through windows in the Buckman Tavern. The thin line is forming, and dusky groups are moving across the green to take their accustomed places. All is silence. The rolling drum has ceased its warning, the last echo of the belfry's brazen voice has died away, and then through the stillness we seem to hear the rhythmic footfall of marching feet. The King's troops are at hand, and as we look into the depths of the gray picture and mark that devoted band standing steadfast by the church, we feel that here is a faithful portrayal of a strangely impressive historic fact. It is an honest picture before which Ananias would slink away abashed.

May I suggest another subject that would lend itself to artistic treatment? I find my text in the simple fact, although our historians have made nothing of it, that when the British approached the Lexington line on their return from Concord it was the bullets of Parker's reassembled company that came pelting among them. I maintain that a body of citizen soldiery that had lost nearly a quarter of their number a few hours before as the result of the close and shattering fire of the Light Infantry would have rested under no stigma had they appeared in arms no more that day. Discipline in the Provincial militia was not strict, but it seems to me that courage was instinctive and the meaning of comradeship and duty well understood in Lexington. Here is the picture. Again the old historic scene with the church and belfry. The British have passed on to Concord, and while we are conscious of the horror and mourning that have come to the quiet village dwellings, the sun shines bright through budding boughs upon the trampled greensward of the Common. What an opportunity for an artist in depicting the faces of those rough determined men who re-

gather about their captain, Jedidiah Munroe among the rest with his bandaged wound. They stand waiting for the command to march. In a moment they will hear the tap of Dimond's drum, they will shoulder their firelocks, and all fearless and unconquered tramp sturdily up the Concord road to meet what it shall please God to send them.

I admit the existence of poetical license in this conception, but I maintain that the license has not been abused, that it violates in no sense the essential fact. That fact to my mind was the most impressive, the most heroic episode of the 19th of April, 1775, and it was performed by Captain John Parker and the men of Lexington on that never to be forgotten day.

MEMOIR

OF

JOHN CHIPMAN GRAY.

By ROLAND GRAY.

In one of his official reports, General Sherman mentions the dispatch of a boat up the Savannah River on an errand of importance in charge of "a very intelligent officer whose name I cannot recall." The officer was Major John Chipman Gray. It was characteristic of him that he found this form of honorable mention not displeasing. Throughout a long career in civil life, during which he attained greater distinction than he ever had the opportunity to achieve in military life, he remained singularly modest. While he appreciated the good opinion of those qualified to judge his work, he disliked all publicity.

John Chipman Gray was born in Brighton, now a part of Boston, on July 14, 1839, the son of Horace Gray and Sarah Russell Gray, daughter of Samuel Pickering Gardner. He was a grandson of Lieutenant-Governor William Gray, a merchant of Salem and Boston, who was the greatest shipowner in the country at a time when we took a leading part in the commerce of the world. From this grandfather came to him the house in Cambridge in which he lived a part of the year.

William and Abraham Gray, the grandfather and father of William Gray, were pioneers in the shoe manufacturing business in Lynn. Two of Mr. Gray's uncles, Francis Calley Gray and John Chipman Gray, were men of prominence in Boston and benefactors of Harvard College. Both were members of the Massachusetts Historical Society. The name John Chipman was derived from the father and grandfather of Elizabeth Chip-

man, wife of Lieutenant Governor Gray, the elder of whom was a well-known clergyman of Beverly.

Horace Gray, Chief Justice of the Supreme Court of Massachusetts and Associate Justice of the Supreme Court of the United States, was an older half-brother. Their father, Horace Gray, the senior, was a merchant on a considerable scale, but met with business reverses before his sons had grown up, which forced them to depend as young men upon their own exertions. In after years Mr. Gray attributed whatever success Judge Gray and he achieved to this stimulus in their early lives. It seems probable that men of such active minds would have achieved distinction under any circumstances, but they might have done so in different fields from those in which their careers actually lay. In the case of John Chipman Gray his life might perhaps have been devoted more exclusively to scholarly pursuits.

Mr. Gray was educated at the Boston Latin School and at Harvard College, from which he graduated in 1859. There is little record left of his school and college days. In a letter to him many years later, one of his schoolmates tells an incident which shows that Mr. Gray possessed in his youth the strong sense of justice which later distinguished him, together with an independent spirit rare among boys. It casts light also on life in the school.

In our Fourth Class year, Mr. Gardner arranged a match between our class and the class above us in Virgil. From 9 to 10, both classes were set to study a certain number of lines; and from 9 to 2, we were all examined together by John Noble. How vividly I recall the time of that fearful five hours examination. As our class had not yet studied Virgil at all, the First Class lent us their books. I remember that you and I alone had so few as four mistakes only — one of which I was so lucky as to wipe out by two "corrections" of false quantities, thereby saving my "approbation card" at the week's end. Next day, Mr. Gardner came down with a copy of Virgil in his hand, saying that the First Class had complained of the way in which their books had been handled; and he asked which of us had used the copy he then held. It turned out that I had had it. Mr. Gardner then asked if that was the way I used borrowed books. I examined the book; there were no torn leaves, no dog's ears, no markings with pen or pencil, no blots or black spots at all — only a slight soiling which could not have been avoided from the perspira-

tion of the hands (for I had held that book five hours open at the same place, in front of the furnace register). "Well?" roared Mr. Gardner. "I don't see —" I began, intending to say, "I don't see there is any injury I could have avoided under the circumstances." But Mr. Gardner burst in after the word "see." "Don't see!" he bellowed, "Pass the book down the division and let us know how many can't see!" So the book passed down, and, as there was the slight soiling I have mentioned, every boy confessed he did "see." Mr. Gardner burst out upon me with a — "Well, Sir, have you concluded that you can *see?*" "No, Sir," I replied, with the miserable sense of being denied all justice in the way of explanation of what I could not see. Mr. Gardner's eyes flashed fire. Striding up to me, he shook that mighty fist of his within an inch or two of my face, and roared out; "Speak another word, and I will thrash you!" Then, turning to the division, he cried; "How many boys in this room will ever believe this young man again on his word?" Out of the forty or fifty boys in the room, only two dared to hold up their hand. You, who sat next to me, instantly held up yours; and Ned Blagden, emboldened by your example, soon after timidly raised his. Mr. Gardner was thunderstruck at seeing you raise your hand; for he, no less than all the rest in that room, knew you to be the most conscientious and truthful boy in the class.

Mr. Gray left the Latin School at the end of the third-class year, and thus gained a year in entering college. By his own account he did not study very hard in college at any subject except mathematics, in which he was always especially interested. Nevertheless, he obtained the fifth place in the class. He was a member of the Phi Beta Kappa Society and of the Hasty Pudding and Porcellian clubs.

The college course was followed by two years in the Harvard Law School, from which he graduated in 1861. He returned for a third year of study, but left the School in January, 1862, receiving his Master's degree at commencement that year. The law school was not then a place of strenuous work for teacher and student, such as it later became under the sway of a new generation of professors of whom Mr. Gray was one. His mind, however, was actively employed not only in studying law but in reading on a great variety of other subjects. He passed there two of the happiest years of his life.

On leaving the Law School, perhaps before doing so, he entered the office of Peleg W. Chandler, a prominent member of the

Boston bar. There he immediately showed an aptitude for the legal profession. When Mr. Chandler subsequently recommended him for the position of Judge Advocate, he wrote: "John Gray was with me a year. He is the ablest man of his age as a lawyer that I know of." Mr. Gray was admitted to the bar September 18, 1862.

While Mr. Gray was never an abolitionist, nor an indiscriminate admirer of the leaders of the Republican party, he was an uncompromising Union man and believed in prosecuting the war with vigor. His fair prospects in his profession, the necessity of standing on his own feet, and his natural inclination toward intellectual pursuits did not prevent him from volunteering for service in the army. He intended to enter one of the regiments raised in Boston in the spring or summer of 1862, but failed to do so, for some reason not now discoverable. On October 7, however, he was enrolled as second lieutenant in the Forty-first Massachusetts Volunteers, to serve for three years.

Lieutenant Gray was immediately detailed for duty on the staff of Brigadier-General Gordon, then at Harper's Ferry. For nearly a year thereafter he remained on duty with General Gordon, moving about from one point to another in Maryland and Virginia, now with the Army of the Potomac and now with the Army of the Peninsula. Although frequently in the neighborhood of fighting, he seems never to have been under fire in these campaigns. He remained always detached from his regiment, which was consolidated in July, 1863, with unattached companies of cavalry and made into the Third Massachusetts Cavalry.

On August 11, 1863, General Gordon, with his division, embarked to join the troops on the islands near Charleston Harbor under General Quincy A. Gillmore, engaged in attacking forts Sumter and Wagner. The division was stationed on Folly Island, an uncultivated sand heap with only one house and inhabited by millions of crabs. Here Lieutenant Gray remained for several months as Assistant Adjutant General, acting as secretary to General Gordon and Assistant Judge Advocate. His diary, and the letters which he wrote to his family and friends, particularly to the late John C. Ropes, show that he took a lively interest, though only as a spectator, in the attack

upon the forts. Some passages in his account of this attack show what was then thought remarkable in the way of artillery operations.

Our first parallel is 1100 yards from Fort Wagner, our second, behind which are the main batteries, 600 yards from Fort Wagner, and the third, which has only one gun in it, is 350 yards; our pickets are within a stone's throw of them. We have one 300-pounder Parrott gun not yet in position, two Whitworth guns, seven 200-pounder Parrotts, five 100-pounder Parrotts, besides small guns. At Fort Pulaski General Gillmore did not have any gun as heavy as a 100-pounder. Our casualties are few. The 300-pounder gun has given a great deal of trouble; it weighs 27,000 pounds and keeps breaking the slings which are carrying it. . . . Our land batteries devote themselves almost exclusively to Fort Sumter from which they are distant, I believe, about a mile and three quarters. What would the old masters of the engineering art say to such a distance, what would have been thought of it ten years ago? Why it used to be a disputed question whether 600 yards was not too great a distance for the batteries to destroy the defences of a place, and the breaching batteries used to be erected at the crest of the glacis.

An interesting incident in his correspondence with Mr. Ropes, in view of the latter's subsequent work, is the suggestion, then discussed between them, that Ropes should write a history of the war.

In March, 1864, General Gordon and his staff moved to the more southerly island of Hilton Head, the headquarters of the Department of the South, a spot to which Lieutenant, or, as he was soon to become, Major Gray was often to return. An example, he calls the place, of what a military headquarters should not be, in the way of wastefulness and idleness. During the next six months, however, he was not doomed to be confined there. In company with General Gordon he was constantly moving from one place to another in the Gulf states, and up and down the river in Louisiana and Arkansas. In August he was at Mobile during the bombardment and capture of Fort Morgan. Though he had received in July an appointment as Judge Advocate, with the rank of Major, for the Department of the South, then commanded by General Foster, he continued to serve as aide to General Gordon until September, when the latter left the Department of the South and Lieutenant Gray was mustered

out of the Massachusetts Volunteers and became a Major on the United States Volunteer General Staff.

When General Sherman was approaching Savannah, at the end of November, an expedition was sent from Hilton Head to capture points on the railroad between Savannah and Charleston. Two engagements, with considerable loss of life, took place, on November 30, near Grahamville, and on December 6 on ground between the Coosawhatchie and Tullifinny creeks. Major Gray took part in both these skirmishes, and the latter was the first and apparently the only occasion during the war in which he was actually under fire, though he shortly afterwards performed service that was perhaps more dangerous. A week later he met Sherman, who had just reached the sea. His first impressions are thus described in a letter to Mr. Ropes:

Str. *Nemaha*, Dec. 14, 1864.

I have just passed a whole morning in the company of the greatest military genius of the country in the height of his success. If I were to write a dozen pages I could not tell you a tenth part of what he said, for he talked incessantly and more rapidly than any man I ever saw. A despatch boat goes North immediately on our arrival at Hilton Head with the glorious news of Sherman's success, but I will try to scribble a word or two as we go along in this shaky boat.

A line first about preliminary movements; about the 25th of November General Foster received orders to make demonstrations against the Charleston and Savannah Road and cut it, if possible, with the view of helping General Sherman, and on the 27th I started with General Foster on board the steamer *Nemaha*, together with 5000 troops, who after they were landed were to be under the command of General Hatch. General Foster's wound makes him unable either to walk or ride, so that he remained on the steamer, and directed operations therefrom; we first attempted to reach the railroad near Grahamville, but met a battery which barred our progress and we retired after considerable loss; other demonstrations were made in different directions, and finally a force was landed at Tullifinny Creek and pushing forward after a sharp skirmish gained a position about ¾ of a mile from the R. R. which we still occupy, and from which with our artillery we can prevent the passage of trains at least in the day time. When this force landed I accompanied General Potter who was in command, and the fight which ensued was the first time I was ever under musketry fire or indeed any fire of consequence. It is singular that I should have been two

years an aide-de-camp on the staff of a fighting brigadier without hearing a bullet whistle, and within two months after becoming the legal adviser of a supposed sleeping department, I should be in the midst of a hot fire, for it was brisk work and looked badly for a few minutes. I suppose you may by this time have seen Colonel Hartwell who was slightly wounded in the fight at Grahamville while leading his regiment in a most gallant manner. All this, which I would like to dwell on, must give place to the great news. I had a long talk with General Foster about Fort Sumter, but this also I must reserve for a future time. On the morning of the 11th news came that a scout of General Howard's had come through and reported all well and last night after General Foster had once attempted in vain to open communication with General Sherman, he again started on the *Nemaha* for Ossabaw Sound, and throwing all business aside, I was bound to go with him. We started about 7-½ P. M., and reached Ossabaw Sound at 2 A. M., where we were boarded by a signal officer who informed us that Fort McAllister had been captured by General Hazen's division in an assault at 5 o'clock the night before, and that he (the signal officer) had seen General Sherman; we steamed up the Ogeechee as near to Fort McAllister as the obstructions and supposed torpedoes would allow us, and sending a boat on shore, General Sherman with a captain of his staff came out, arriving about 7-½ o'clock and remaining till half past one.

First about Fort McAllister, the "all important capture" of which, as General S. terms it, secures an excellent base for such supplies as may be needed. The fort is very strong, mounting 21 guns, some of which are field pieces, and many months ago beat off three heavy ironclads, inflicting considerable damage; the assault was made by three columns, each of three regiments, and twenty-five minutes by the watch, as General Sherman says, after the first order was given the fort was in our possession; the garrison fought desperately, and several refusing to surrender were killed inside of the fort, our loss was about 80, of whom half were killed and wounded by the explosion of torpedoes buried in the ground which were exploded by our men walking over the works after they were captured. General Sherman set the prisoners to work digging them up and informed the commander of the fort that he had it in consideration to shut him up with a number of his men equal to the number of our men who were killed by torpedoes and blow them up by gunpowder.

General Sherman is the most American looking man I ever saw, tall and lank, not very erect, with hair like a thatch, which he rubs up with his hands, a rusty beard trimmed close, a wrinkled face, sharp, prominent red nose, small, bright eyes, coarse red hands;

black felt hat slouched over the eyes (he says when he wears anything else the soldiers cry out, as he rides along, "Hallo, the old man has got a new hat"), dirty dickey with the points wilted down, black, old-fashioned stock, brown field officer's coat with high collar and no shoulder-straps, muddy trowsers and one spur. He carries his hands in his pockets, is very awkward in his gait and motion, talks continually and with immense rapidity, and might sit to *Punch* for the portrait of an ideal Yankee. He was of course in the highest spirits and talked with an openness which was too natural not to be something more than apparent. In striving to recall his talk, I find it impossible to recall his language or indeed what he talked about, indeed it would be easier to say what he did not talk about than what he did. I never passed a more amusing or instructive day, but at his departure I felt it a relief and experienced almost an exhaustion after the excitement of his vigorous presence.

He has Savannah securely invested, his left rests securely on the Savannah River, his right at Fort McAllister, his line is within the 3 mile post from the city; he intends to throw a division across the Savannah to prevent the escape of Hardie from the city, and says he shall take his own time about reducing the city, unless he is hurried by despatches from General Grant; he has 60,000 men with him and only wishes there were more men in Savannah; he says the city is his sure game and stretches out his arm and claws his bony fingers in the air to illustrate how he has his grip on it. There is a "whip the creation" and an almost boastful confidence in himself which in an untried man would be very disgusting, but in him is intensely comic. I wish you could see him, he is a man after your own heart, like Grant he smokes constantly, and producing 6 cigars from his pocket said they were his daily allowance, but judging at the rate he travelled through them while he was on our boat, he must often exceed it. He scouted the idea of his going on ships and said he would rather march to Richmond than go there by water; he said he expected to turn North toward the latter end of December, at the same time the sun did, and that if he went through South Carolina, as he in all probability should, that his march through that state would be one of the most horrible things in the history of the world, that the devil himself could not restrain his men in that state; and I do not think that he (that is Sherman, not the devil) would try to restrain them much. He evidently purposes to make the South feel the horrors of war as much as he legitimately can, and if the men trespass beyond the strict limits of his orders he does not inquire into their cases too curiously. He told with evident delight how on his march he could look 40 miles in each direction and see the smoke rolling up as from one great bonfire.

His army has been and is in perfect health and spirits, with everything they want, in much better condition than if they had remained at Atlanta, they are all ready to march anywhere with the "old man" in five minutes. The army has not been on diminished rations a day since they left Chattanooga, and since they started on this last march General S. says that they have had turkeys every morning for breakfast, and won't condescend to eat hogs. His better disciplined regiments have now in their knapsacks 7 or 8 days bread with which they started and the army brought in great droves of cattle, mules and negroes, the latter of whom he wants to turn over to General Sexton, and evidently does not believe in the African as a soldier; he says he has destroyed $50,000,000.00 worth of property and saved the Government $3,000,000.00 for the expenses of his army.

The steamer is going and I have to close without beginning to say what I wish; General Sherman says the opposition to him was puerile and his infantry was never attacked.

On February 1, 1865, he was sent by General Foster to carry a despatch to General Sherman, who had left Savannah on his way to Columbia. He started in the evening to go up Pocataligo Creek by boat; but he found that impossible, and the next day took to the land. A letter to Mr. Ropes recounts his experiences, the most interesting in his military career, and gives a glimpse of Sherman's army on the march.

After landing on the bank I walked a mile and a half to Pocataligo Station where I found General Hatch and learned that General Sherman had cut loose entirely, his last troops having left on the morning of the day before. General Hatch said it was impossible for me to go alone, and all his cavalry had gone off to Robertsville; he offered me an infantry escort, but I rather demurred to the slowness of that, and finally he gave me a sergeant and twelve men from a light battery mounted on team horses and armed with pistols, besides this there were four cavalry men going back to Sherman; I started off about half past ten, and I confess thought there was about one chance in ten of my getting back safely, and a very disagreeable prospect of being hung if I was captured by any of the guerillas exasperated by the havoc made by Sherman's army.

Off I went at a trot, and found great difficulty in keeping the men up with me even at a slow gait; my pistol with its holster broke from my belt without my knowing it, and so I was left entirely without arms. Fortunately, however, I saw no one except a few negroes till I reached Hickory Hill, 18 miles out, where I found the rear guard of Sherman's army just leaving; here I left my escort and rode on

13-½ further to Duck Bridge over the Coosawhatchie, where General Sherman had encamped for the night with the 15th Corps which, with its wagons, about 500 in number, lined the whole length of the road. The road was bad, in many places going through great pools nearly up to the horses' bellies, and two or three hundred yards across, but everything kept well up, the teams were excellent and no wagons were stalled. There was absolutely no straggling. . . . I delivered my despatches to General Sherman, took dinner or supper as you may choose to call it with him, and after being there two hours started back with a letter and verbal instructions from him to Pocataligo. I tried to trot and succeeded for a mile or two, but my horse was too fagged to make it safe to keep up the gait and so with the exception of about a mile I walked my horse the 31-½ miles back to Pocataligo, picking up my escort as I went back. The road was so bad and the night so dark that I could hardly have gone any faster had my horse been fresh, and as it was, I had to beat and spur my poor brute to prevent his stopping altogether; it took me ten hours to get back to Pocataligo, making 63 miles in 20 hours with only 2 hours out of the saddle, soon after midnight too it began to rain and before daylight was pouring hard. Next morning I understand Wheeler's cavalry made their appearance in front of Pocataligo, so that I was fortunate in returning by night and not waiting with Sherman for day. As I have not been on a horse more than twice for the last nine months and then only for short rides, you may imagine I was pretty stiff and sore for a day or two. Still I would go through the fatigue and anxiety again for the pleasure of having seen one good day of the march of Sherman's army; it was a beautiful sight to see the long line of camp fires in the woods; with one or two exceptions all the buildings and fences on the road were burned, and it was a curious sight to see how the fires gradually died out, from the bright red flames pouring forth from house and cotton gin in the immediate rear of his army to the utter blackness near Pocataligo where the army had passed two days before.

General Foster now left for the north and Major Gray became Judge Advocate on the staff of General Gillmore, commanding the department.

On the first of May General Sherman, who had come south again by sea to Port Royal, ordered supplies and a detachment of troops to be sent immediately up the Savannah River to Augusta, to occupy the arsenal there and open up communication with General Wilson at Macon. The first boat that started up was in charge of Major Gray; and it was with reference to

this expedition that General Sherman made the remark quoted at the beginning of this memoir.

In a letter in April, 1865, after Lee's surrender, Major Gray wrote: "If on the reorganization of the army I could get a place on the staff with my present rank, it would be a strong temptation to me, though I doubt whether it would be a wise thing to take it and I see no chance of having the opportunity." In July, however, he went north on leave of absence and obtained his discharge without returning.

Mr. Gray's life in the army was for the most part uneventful, and to many would have been tedious, but it was not so to him. Shortly before his resignation, he wrote: "During my army life I have not been lazy, for I can never be comfortable while idle, but my labor has been self-imposed." Always a great reader, during the war he read Latin, Greek, Italian, French, English literature, theology, history, the natural sciences, military science, and law; and he began the study of German and Spanish shortly after leaving the army.

In later life he seemed little of a military or ex-military man. Although he took an interest in military history, European as well as American, he seldom spoke of his experiences in the army and did not care to be addressed by his military title. One of his colleagues in the Law School tells how some of them, after many years' association with him, first learned that Professor Gray was entitled to call himself Major, from a chance visitor addressing him by that title. This apparent lack of interest in his military career was probably due to an extreme modesty which disliked all titles of honor and preferred that the performance of a simple duty in an inconspicuous way should not be treated as a distinction. It was also characteristic of him not to indulge in reminiscences about the past. The Spanish War he always thought unjustifiable; in fact, he hated the mention of it, although he admitted that the mass of the people of the United States were actuated in it by generous motives.

One of the few occasions on which Mr. Gray seemed to remember that he had been an officer was when he expressed his disgust with pension grabbers. He felt the exploits of the grabbers, and the attitude of Congress in currying favor with them, as not only a disgrace to the country, but an insult to the army

in which he had served. His admiration for Grover Cleveland, which came hard to one who had been a Republican all his life till the Blaine campaign, was enhanced by that president's courage in vetoing pension bills.

On returning from the war Mr. Gray formed a partnership with Mr. Ropes, which lasted until the latter's death in 1899. In 1878 the firm was enlarged by the addition of Mr. William Caleb Loring, now a Justice of the Supreme Court of Massachusetts. Mr. Gray continued until his death in active practice as head of the firm, which included at that time eight of his former pupils at the Harvard Law School. In the autumn of 1866 Mr. Ropes and he became editors of the *American Law Review*, then first established, and edited four volumes, from 1866 to 1870.

On December 4, 1869, he was appointed lecturer in the Harvard Law School for the residue of the academic year; this appointment was renewed for the three academic years 1871–74, and on March 18, 1875, he became Story Professor of Law. In 1883 his title was changed to Royall Professor, and this position he occupied until February 1, 1913, when his resignation was accepted and he was appointed Royall Professor Emeritus.

During this period he was publishing his books — *Restraints on Alienation* in 1883, the *Rule against Perpetuities* in 1886. In 1909 Columbia University published a series of lectures on jurisprudence, delivered there by him, under the title *The Nature and Sources of the Law.* A second edition of *Restraints on Alienation* was published in 1895, and a second and third editions of the *Rule against Perpetuities* in 1906 and 1915, all the new editions receiving substantial revision.

On June 4, 1873, Mr. Gray married Anna Sophia Lyman Mason, daughter of the Reverend Charles Mason, Rector of Grace Church in Boston, and granddaughter of Jeremiah Mason, Senator from New Hampshire and rival of Daniel Webster for the leadership of the bar of the United States. He had two children, both of whom survive him, Roland and Eleanor Lyman, now the wife of Henry D. Tudor; and he lived to see six grandchildren.

Professor Gray received the degree of Doctor of Laws from Yale in 1894 and from Harvard in the following year. Among

the honors conferred on him were the offices of president of the Harvard Alumni Association; president of the Harvard Chapter of the Phi Beta Kappa Society; vice-president of the Harvard Law School Alumni Association; member of the Council of Radcliffe College; president of the Boston Bar Association; vice-president of the American Academy of Arts and Sciences; trustee of the Boston Museum of Fine Arts, the Boston Athenæum, and the Social Law Library; he was a member of the Loyal Legion, the Massachusetts Historical Society, and the Massachusetts Military Historical Society. He never held any public office, although he was several times offered a seat on the bench of the Supreme Court of Massachusetts, and once at least that of Chief Justice.

It was in 1896 that Mr. Gray became a trustee of the Museum of Fine Arts, a position which he held through life. In the Annual Report of the Museum for 1915 is a memorial, stating his valuable services to the Museum, in which he is spoken of as having "that wisdom which is born of sympathy and justice."

In these varied activities Mr. Gray continued engaged with little diminution of energy until after the age of seventy. Not before 1912 did he begin to feel the strain seriously. In January, 1913, he resolved to cut down the amount of his work, and accordingly sent his resignation to Harvard College. This measure of relaxation, however, had been too long delayed. The same month, while engaged in the preparation of a case in court, he had a stroke of paralysis. He recovered from this rapidly and was back in his office, though physically feeble, during the spring; next autumn he was actively practising law. In April, 1914, a few days subsequent to the argument of an important case, he had another stroke, after which he never returned to his office. He retained his intellectual faculties, however, until his death, which took place February 25, 1915. Within a few weeks of the end he was not only enjoying conversation with his friends, but working at the revision of his books and expressing opinions on novel points of law.

The most unusual feature of the career thus briefly sketched was the high degree of success achieved in three fields, all related to the law, but requiring different qualities. Mr. Gray was eminent as a practising lawyer, a teacher, and a writer.

He was the leading authority in New England, and probably in the United States, on the law of property. His opinions on questions in that branch of the law have had more weight with the bar in other states than those of any person except perhaps their local leaders, and by many lawyers, at least in states where the common law prevails, they have been regarded as of the highest authority without even such exception. His practice, however, was not confined to a single part of the law, but took a wide range. He had a plain common sense and a shrewdness in dealing with practical affairs such as are seldom found in combination with great technical learning.

Mr. Gray avoided rather than sought cases in any way notorious. He always endeavored to prevent litigation, and the nature of the questions on which he was an authority was such that most of the cases in which he was engaged, even when they involved large private interests and important questions of law, did not attract public notice. A great part of his time, however, he spent in business of public interest, acting as counsel to churches and educational institutions. He was an authority on the law of charities, which includes, in legal parlance, all religious and educational bodies of a public character. Among the institutions by which he was consulted were St. Paul's Church, Trinity Church, King's Chapel, Harvard College, the American Academy of Arts and Sciences, the Boston Athenæum, Phillips Academy in Andover, and the Worcester Art Museum.

For St. Paul's Church he argued the case of *St. Paul's Church* v. *Attorney General* (164 Mass. 188), which decided important questions in the law of charities, and he also acted as counsel at the time of the transformation of the church into St. Paul's Cathedral. For Trinity Church he argued the case of *Sears* v. *Attorney General* (193 Mass. 551), which finally removed the long-standing doubts, arising from some incidents in the ecclesiastical history of this commonwealth, whether a gift devoted to religious uses, in connection with a particular church, is a public charity. In 1907 he was consulted with regard to the conveyance of King's Chapel to trustees. As was natural, he frequently advised Harvard College, and he argued for it the case of *Dexter* v. *Harvard College* (176 Mass. 192), in which the validity of bequests for scholarships,

with a preference for the founder's kin, was sustained. In 1894, when Radcliffe College received its present name, he took an important part in the reorganization, being the author of the arrangement by which the President and Fellows of Harvard College became the Visitors of Radcliffe. On several occasions he advised the trustees of Phillips Academy in Andover, the corporation by which the Theological Seminary as well as the Academy is conducted; and he argued for them the case of *Smyth* v. *Phillips Academy* (154 Mass. 551), growing out of the famous controversy in which the Visitors removed Professor Smyth for heresy. At the time of the removal of the Andover Theological Seminary to Cambridge, and its affiliation with Harvard University, he was consulted by the latter. For the Worcester Art Museum he conducted the protracted litigation with respect to the great bequests of Stephen Salisbury, reported in *Hubbard* v. *Worcester Art Museum* (194 Mass. 280; 179 Federal Reporter, 406; 220 United States, 605; 196 Federal Reporter, 871). In the suits with regard to the land on Boylston Street occupied by the Massachusetts Institute of Technology — *Wilson* v. *Massachusetts Institute of Technology* (188 Mass. 565) and *Massachusetts Institute of Technology* v. *Boston Society of Natural History* (218 Mass. 189) — which touched upon matters of public concern in addition to the interests of the charity, he appeared for the persons opposing the Institute. The argument of the latter case in March, 1914, was the last occasion upon which he went into court.

Mr. Gray's practice was not confined to Massachusetts. He was frequently consulted by clients in other states, particularly Rhode Island and Pennsylvania. In the latter state he was of counsel in the case of *Franklin's Estate* (150 Pa. 437), concerning the will of Benjamin Franklin. His opinion was frequently sought in the Hawaiian Islands, where the law follows closely that of Massachusetts, perhaps because missionaries from here played a prominent part in their settlement. The first case in those islands in which the rule against perpetuities was applied, involving a very large amount and interesting questions of law, was argued by him in the Supreme Court of the United States — *Fitchie* v. *Brown* (211 United States, 321). His high reputation outside of his special subject and beyond New England was shown by the fact that in the summer of 1907, by

invitation of counsel on all sides, he went to Chicago to act with Judge Grosscup as arbitrator in matters connected with the reorganization of the street-railway system in that city.

He was successful in the management of property and was trustee of many estates.

Mr. Gray's reputation for learning and sagacity has been mentioned. He enjoyed a still more enviable reputation for fair-mindedness. Many intend to be fair-minded; fewer have the mental poise which enables them, in the heat of conflict, to avoid even the appearance of the slightest injustice toward their adversaries. With this rare quality was joined a courtesy which exceeded the demands of professional etiquette and made even his opponents feel that it sprang from the kindliness of his nature. His reputation as a lawyer and as a man was such that it illustrated, on a high plane, the proverb that "Honesty is the best policy." Even unscrupulous lawyers seldom wished to take advantage of him. Nor would anyone have ventured to try to do so; for not only was Mr. Gray well able to take care of himself, but an opponent knew that, if a question arose as to fair dealing or courtesy, the bench, the bar, and the opponent's own client, would assume that Mr. Gray was in the right. It was significant also of Mr. Gray's reputation in the community that people brought to him disputes which they wished to keep out of court, or to have conducted in court with as little friction as possible. For this reason he was employed in many family matters which did not involve those points of law on which he was an authority. And it showed his kindliness and delicacy, as well as his fair-mindedness, that in family quarrels he always retained the respect and often gained the increased good will of both sides.

Although Mr. Gray's career as a practising lawyer was distinguished, he was still more widely known as a teacher and a writer; and those activities stood first in his own mind. When he declined a judgeship, it was chiefly because of his devotion to the Law School and his purpose to write on topics which had early attracted his interest. Writing was, of course, consistent with teaching. But President Eliot and Dean Langdell doubted whether practising and teaching could be successfully combined. Mr. Gray would have been made a professor earlier

than he was if he had been willing to give up his practice. He refused an appointment offered with that condition, because he wished to continue in practice and believed that he would be the better teacher for doing so; and finally he was made professor on his own terms.

Professor Gray began to teach at the Law School before Dean Langdell came to it, and he had the longest period of service of any teacher there. At the time of his resignation, all the instructors had been his pupils. President Lowell has called him "the last of the great figures that made the reputation of the Law School in the last forty years"; he was also the first of them to begin work there. In his early years he taught a wide range of subjects: Evidence, Conflict of Laws, Bankruptcy, the procedure of the Federal Courts, and all branches of the law of property; later he confined himself to the law of property, except during a brief period after the death of Professor Thayer in 1902, when he taught Evidence and Constitutional Law, and excepting also some lectures on jurisprudence.

Among a faculty distinguished for their success in teaching, Professor Gray was one of the favorites with the students. In the classroom he combined the practical with the theoretical, striking a happy medium between too much speculation on what the law ought to be and the mere recital of precedents. Yet the kindliness of his character and his evident desire to help his pupils counted for more in his success than any method of teaching. He took unusual pains to encourage the students to talk with him. Naturally rather reserved, he showed the friendliness of his disposition most easily to younger men. His sense of humor, also, and his total lack of affectation made his teaching attractive. Though he taught a highly technical subject for so many years, his mind never lost its flexibility; he could always take a new point of view and was frank to state a change of opinion. This was characteristic of him both as a teacher and a writer.

Professor Gray disliked theories of pedagogy; in matters of education he declared himself an empiric. As he grew older he more and more avoided stereotyped methods and in later years used no lecture notes except brief annotations in the margin of the case book. The substance was in his head; the form largely extemporaneous. In one of his addresses to

his old pupils, he spoke of his own attitude toward the teaching of law, in words which help to explain his own success:

I have never been able to share the feeling of those who regard the law as simple, who say that if you can only get hold of a few fundamental principles all is easy. Law is as complex as life. However often I may have been over a subject, I never go over it again without coming across questions, analogies, that I never saw before.

Some of my colleagues in the College (none in the Law School, I never heard such things there) are in the habit of lamenting that they have so much of the drudgery of teaching that they have no time for original research. They have never won much pity from me. They are like the English officer who said that the army would be a very good profession for a gentleman were it not for those damned soldiers. A teacher who has not allowed his wits to be dulled by routine, will find plenty of matter for research in his daily work.

In his long course of teaching Professor Gray was an inspiration to more than a generation of lawyers, over every part of the United States. His influence even extended across the Pacific; for a large number of Japanese passed through the School. With one of these, Viscount Kentaro Kaneko, at one time a minister in the Imperial Government, he kept up a familiar correspondence.

Near the end of his life, Professor Gray dedicated his book, *The Nature and Sources of the Law*, "To his old pupils whose affectionate regard has been to him a life-long blessing, from their grateful master." In a man so free from affectation as Professor Gray, these words are proof of the mutual feeling which existed.

Although perhaps best known as a teacher, Professor Gray was in some respects even more widely known as an author. His books on *Restraints on Alienation* and the *Rule against Perpetuities* are the principal, and indeed the only complete treatises on their subjects in this country and in England. The *Rule against Perpetuities* enjoys an even higher reputation in England than here. Only a few American authors have been cited frequently by English courts. Of these, Judge Story, and possibly some others, may have been oftener mentioned than Professor Gray. But it is believed that no other American legal writer has been treated as an authority of such weight. And this is the more remarkable because the abstruse parts of

the law of property are more familiar to the bench and bar in England than in the United States. A living American writer in a domain peculiarly English has been accorded a degree of respect paid to few modern English authors. Indeed, an English specialist on these topics, who differs from Professor Gray on several points, has feelingly complained that "the tendency of our judges is to regard him as orthodox, if not infallible," and in another place says that his work on Perpetuities "has the proud distinction of having influenced the decisions of our Courts." It has been cited as authority in reported cases over the whole English-speaking world from Manitoba to New South Wales and New Zealand.

The subjects of these two books are narrow and in a sense technical. The author deliberately chose restricted subjects in order to allow thoroughness of treatment; and his thoroughness has seldom, if ever, been equalled. Other law books have discussed a subject fully from the historical and theoretical sides, though American writers have not usually reached as high a standard in this respect as have the English; but few indeed have dealt exhaustively with the cases all over the English-speaking world. Moreover, the topics treated, though technical, are not mere survivals from feudalism, like some of the existing doctrines as to land; they are rules of public policy, which must exist in some form as long as there is private property. To some, perhaps, these books may appear full of antiquities and of logical refinements; but this is not true to any greater extent than the subjects require. Professor Gray was never distinctively an antiquarian, nor a lover of subtle reasoning for its own sake. He had always an ethical purpose in writing his books — to make the law a better instrument, to remove defects (as he phrased it) which "lessen its value as a guide to conduct." Such a purpose was emphatically expressed in the preface to the second edition of his *Restraints on Alienation*, in a passage which incidentally gives a good example of his style:

> The people of the United States have many virtues, but all nations have their failings, and there are passages in the history of every country which it is painful for its citizens to contemplate. In our own history, political and social, the pages from which we most gladly avert our eyes are those which record our shortcomings in the matter of commercial honesty.

More than once have we been saved from national repudiation by the integrity and courage of some one man; to save from State repudiation the one righteous man has at times been wanting; and more rehabilitated cheats have lived tolerated, if not honored, in our cities than it is pleasant to think of.

If there is one sentiment, therefore, which it would seem to be the part of all in authority, and particularly of all judges, to fortify, it is the duty of keeping one's promises and paying one's debts.

Nor could it be said that the highest tribunal in the country had been wanting in this matter. Not long before, it had strained its jurisdiction to the uttermost to compel defaulting towns and counties to pay their obligations; and it had recently declared that no interest in property could "be so fenced about by inhibitions and restrictions as to secure to it the inconsistent characteristics of right and enjoyment to the beneficiary and immunity from his creditors."

When, therefore, the Supreme Court went out of its way to announce that it now repudiated its former doctrine, and that it wished it to be known that property could be so fenced about as to secure to it the characteristics of right and enjoyment to the beneficiary and immunity from his creditors, the words came to many persons with a shock. Nor was the shock lessened when the Supreme Judicial Court of Massachusetts, pushing the new doctrine to its extremest limits, held that a man's interest in trust property could be protected from his creditors by simply saying that it should be.

I have written other things, for one motive or another, but this essay wrote itself. While I was musing, the fire burned. *Vae mihi si non evangelizavero.*

These two books are of interest to no one except lawyers, and not to every lawyer. But when Professor Gray was seventy years old, a series of lectures of his was published by Columbia, which showed that nearly half a century of study of dry legal doctrines had not prevented him from taking a broad and untechnical view of the law as a whole. This book on *The Nature and Sources of the Law* is of interest to every educated man. The acute reasoning and deep learning of the book were to be expected from a lawyer of such reputation, writing upon such a subject. Its singular distinction is its readability. A reviewer in an English legal periodical characterizes it as "a book which bears in every page the marks of thorough and independent thought clearly expressed, and is yet one which can be read in an

easy chair with a pipe in one's mouth and one's feet on the fender." And this is true for others than lawyers, for there is in it very little technical phraseology.

The late Dean Thayer of the Harvard Law School, one of the most brilliant of our younger lawyers, wrote to Professor Gray: "Your ability to put questions of jurisprudence to the test of a homely illustration brought about almost a magical clearing of the air. This ability (added to clear thought and common sense and real learning) is certainly a new thing among English writers." With Professor Gray this method was deliberately and constantly employed. In his preface he expresses his conviction that "the use of homely expressions and examples helps one to keep a grasp on the facts of daily life, the loss of which is the chief danger of the moral sciences." Indeed, this quality of intelligibility not only adds to the usefulness of the work by increasing the number of those who can understand it, but tends to show the correctness of its conclusions. Every one ought to be able to understand the nature of law without being a lawyer or professional philosopher. Only common sense and a knowledge of facts familiar to every educated man are necessary. A correct theory on such a matter may be expressed in difficult language; but this is not necessary. Difficult language constantly serves to hide fallacies which could easily be perceived if expressed in plain terms and illustrated by familiar examples. That a theory, on the other hand, lends itself to a mode of expression intelligible to the ordinary man, is evidence in favor of its truth.

Professor Gray also published two editions of a collection of *Cases on the Law of Property*, with notes, in six volumes. These case books are now used in the law schools of Harvard, Yale, the University of Chicago, the University of California, and twenty more institutions from Georgia to the State of Washington; and they have had an influence on the profession apart from their use in instruction. He accomplished much other work of an editorial character. While assisting Mr. Albert G. Browne as Reporter of the decisions of the Supreme Judicial Court in volumes 100 to 111 of the Massachusetts Reports, he did the principal part of the work in most of those numbers. In 1868 he prepared an edition of *Story on Partnership*. He wrote occasionally, though not very frequently, for legal peri-

odicals; but the most important of his contributions were subsequently embodied in his books.

Mr. Gray's interests apart from his work were mainly intellectual. In his vocation and in his avocations he illustrated the belief which he once expressed to a company of students, that there is "no surer and more unfailing source of happiness than the disinterested love of knowledge." He was a great reader at all times, even while in the midst of hard work. Though he made no pretensions to profound scholarship, he continued to read Latin and Greek all his life, and his library contained a nearly complete collection of the classical authors, including many little known works. He was familiar with a wide range of literature in several modern languages, with history, especially military and ecclesiastical, with books of travel, and with theology, particularly old controversial, casuistical, and ceremonial works. He also took an interest in many branches of science. In vacation his favorite recreations were mathematics and botany; but neither to these nor to any other hobby did he ever sacrifice the work of his profession.

He knew something about art, especially perhaps in its more intellectual aspects. Engravings peculiarly interested him, partly because a taste for them was transmitted in his family, partly perhaps as the product of a refined and intellectual form of art.

Though by nature reserved, Mr. Gray was never unsociable, and as he grew older he liked more and more to see people. He dined out often, and belonged to many dinner and supper clubs from which he derived much pleasure. He was always in demand in society; and his conversation was enjoyed by all ages and all sorts of people. One of the principal reasons for this was that he always found something to say about the subject in which the other person was interested, and never seemed to be thinking of himself. Indeed, people often wished he would speak more of his own experiences and opinions. Usually he seemed to avoid expressing an opinion on matters which might raise a discussion. In many cases this was not because he had no opinions on the subject, but because he had decided opinions which he did not care to discuss. He had a strong temper, under admirable control, together with a very

gentle disposition; the combination made him shun all unnecessary disputes.

From what has been said it is evident that Mr. Gray's success in life was very largely due to his character as well as to his abilities. In his character perhaps the most conspicuous qualities were the sense of justice, moral and intellectual conscientiousness, kindliness, and modesty.

He possessed a notable faculty for reaching the just conclusion in the settlement of controversies. It was in private life, however, that he showed the quality of justice most admirably. His affections and many of his prejudices were strong; but they never overcame his sense of justice in his treatment of others. And in his speech he was not only just but charitable; he was reluctant to judge at all.

Conscientious in daily life, without suffering from the New England perversion of the quality, he combined in his work a scrupulous regard for the rights of others with an abstract love of truth. Beyond the right of his client, his pupil, or his reader, to have the law stated as correctly and as clearly as the utmost pains could accomplish, lay an inner necessity to make every conclusion as accurate as possible. He was always anxious to acknowledge his own errors, and he would never sacrifice clearness of statement, or the truth as to the actual state of the law, in order to appear original or subtle. It was notable also that although his mind was eminently capable of logical and metaphysical subtleties, as well as purely antiquarian researches, and he occasionally indulged in such pursuits as recreations, he seldom spent much time on them. Regarding the law as a practical science, a guide to conduct, he devoted himself to matters bearing on it as such. Elaborate reasoning and exhaustive historical research are found in his works, but only so far as he deemed them indispensable to the thorough consideration of present questions of law.

Kindliness was at the root of the dignified courtesy and charm of manner which distinguished him. In his case tact sprang from the same source. His success as a teacher and his peculiarly enviable reputation as a practising lawyer were largely due to these qualities.

A man who undertook such heavy tasks in so many fields as did Mr. Gray could not lack confidence in his own powers;

yet he was genuinely modest. What he took in hand he accomplished, but usually he was more apt than anyone else to find ground for criticism in the results. He cared nothing for the praise of people in general. The personal respect and affection of his friends and of his past and present pupils he valued. But with regard to his work, he preached and practised the principle that the only good opinion worth having was that of those qualified to judge.

That good opinion he won in abundant measure, and he was peculiarly fortunate in having so large a number of those among whom he lived and worked come under his personal influence at the beginning of their careers, thereby gaining not only their admiration for him as a master in the law, but their affection for him as a man.